

**ONTARIO PUBLIC SERVICE
LABOUR RELATIONS TRIBUNAL
DECISIONS**

Public Service Labour Relations Tribunal (19 green volumes donated to library by OLRB Solicitors' Office, November 19, 2004 plus 2 file boxes of decisions)

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1. The first part of the report deals with the general situation of the country and the position of the various groups of the population. It is a very interesting and informative study of the social and economic conditions of the country.

2. The second part of the report deals with the political situation of the country. It is a very interesting and informative study of the political conditions of the country.

3. The third part of the report deals with the cultural situation of the country. It is a very interesting and informative study of the cultural conditions of the country.

4. The fourth part of the report deals with the economic situation of the country. It is a very interesting and informative study of the economic conditions of the country.

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6. The sixth part of the report deals with the legal situation of the country. It is a very interesting and informative study of the legal conditions of the country.

7. The seventh part of the report deals with the educational situation of the country. It is a very interesting and informative study of the educational conditions of the country.

8. The eighth part of the report deals with the health situation of the country. It is a very interesting and informative study of the health conditions of the country.

9. The ninth part of the report deals with the environmental situation of the country. It is a very interesting and informative study of the environmental conditions of the country.

10. The tenth part of the report deals with the international situation of the country. It is a very interesting and informative study of the international conditions of the country.

USER'S GUIDE TO DECISIONS OF THE ONTARIO PUBLIC SERVICE LABOUR RELATIONS TRIBUNAL

Overview of the Decision Research System

The Tribunal Decision Research System consists of three parts: the indexes, the decision summary sheets, and the decisions themselves. The indexes and summary sheets are located in this binder. The decisions themselves, in full text, are located in cerlox-bound volumes, except for supplementary decisions issued since the last update of the indexes, which are filed in a three-ring binder. Both the summary sheets and the decisions are filed in order of their Tribunal number (see the note below on decision numbers).

To research Tribunal decisions, follow these steps:

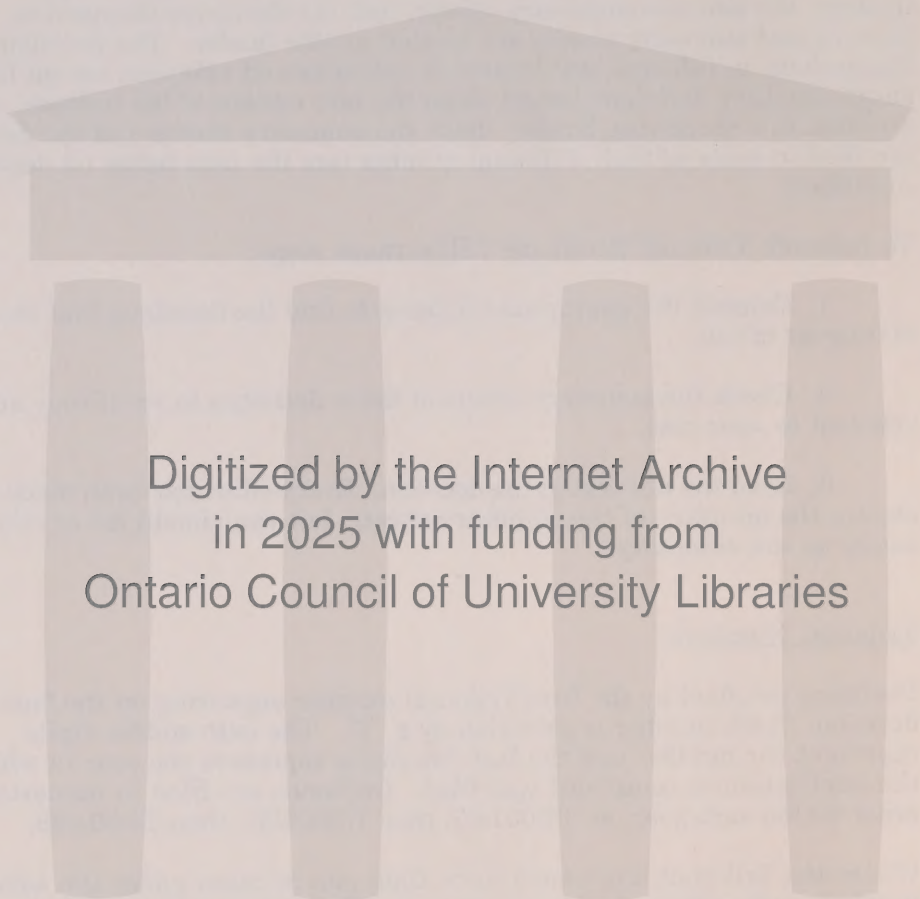
1. Consult the appropriate indexes to find the decisions that may be of interest to you.
2. Check the summary sheets of those decisions to see if they are relevant to your case.
3. Read the full text of the decision. Every effort has been made to ensure the accuracy of the summary sheets, but you should never rely solely on the summary.

Tribunal Numbers

Decisions are filed by the first Tribunal number appearing on the face of a decision. Each number is preceded by a "T". The four middle digits represent the number and the last two digits represent the year in which the application or complaint was filed. Decisions are filed in numerical order within each year, ie. T/0001/87, then T/0002/87, then T/0001/88.

Where the Tribunal has issued more than one decision under the same number, each number has been given a suffix to distinguish it for the purposes of this system. Thus, the first decision is T/0001/87-1, the second is T/0001/87-2, etc. Occasionally the first decision will not have the suffix "-1" added, but the later decisions will have the suffix.

In early years the Tribunal did not use the first two 00's in the middle digits. However, for the sake of consistency these have been used in the numbers on the summary sheets and in the indexes. Numbers with or without the extra 00's are equivalent; for example, T/9/74 is the same decision as T/0009/74.



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Parties

As much information as possible is given about the parties, based on the information contained in the decision. In the 1970's, especially, information was often incomplete.

For example, the employer was often described merely as the "Crown in Right of Ontario". Where a Ministry or other body is identifiable in the text of the decision, that body is listed as the employer; otherwise, the employer is simply identified as the Crown.

In some cases, especially in employee status applications, an individual employee is identified even though, technically, the employee was not a party to the proceeding. This was done because of the Tribunal's practice of referring to these decisions by the employee's name, so that it would be easier to find the decisions corresponding to the references.

Updating the Information

The currency of each of the indexes is shown at the bottom of each index page. More recent decisions are indexed twice a year and listed in the Supplementary Indexes. The summary sheets for the supplementary decisions are interfiled with the other summary sheets. The decisions themselves are filed in the Supplementary Decisions binder.

It is planned to consolidate the supplementary indexes and decisions annually.

Subject Index and Supplementary Subject Index

Before consulting the Subject Index, you may find it helpful to check the Subject Headings List. This list, filed under a separate tab, shows all subject headings currently in use in the Subject Index. It also gives some cross-references.

Only regular Tribunal decisions are subject indexed; interest arbitration decisions are not subject indexed.

Every effort has been made to be consistent and accurate in the subject indexing. However, given the unique nature of many cases before the Tribunal, inconsistency in short phrases is unavoidable. Users are advised to scan all entries under a subject heading. Users are also advised to check all possible subject headings that may relate to the question being researched.

Statute Index and Supplementary Statute Index

This index refers only to sections of the *Crown Employees Collective Bargaining Act*. Although other statutes are sometimes referred to in the decisions (such as the *Public Service Act* and the *Successor Rights (Crown Transfers) Act*) these statutes are indexed only in the subject index.

The majority of Tribunal decisions refer to a section of C.E.C.B.A., as every application has a statutory basis. However, only those decisions that actually interpret or substantially consider a section are indexed in the Statute Index.

Some decisions refer only to a general section number, while others give the specific sub-section number. Users are advised to check under both numbers when researching decisions in the Statute Index.

Only regular Tribunal decisions are statute indexed; interest arbitration decisions are not statute indexed.

For purposes of the Statute Index, section numbers from earlier versions of C.E.C.B.A. have been converted to their current section numbers in R.S.O. 1980, as amended by S.O. 1984, c. 55, s. 214.

Supplementary Table of Tribunal Decisions

This index lists all decisions issued since the date of the main indexes, in numerical order. These decisions also are included in the Supplementary Subject Index and the Supplementary Statute Index.

Interest Arbitration Table of Decisions

This index lists each interest arbitration decision, in numerical order. There is a separate Supplementary Table of Interest Arbitration Decisions.

Interest arbitration decisions are not summarized, subject indexed or statute indexed.

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Particulars - Effect of statement of particulars - *O.P.S.E.U. and Ministry of Community and Social Services (Leclair)*, T/0015/90-2 (June 17/91)

Procedure - Appointment of investigator - Duties of investigator - Section 32 - *O.P.S.E.U. Local 209 and O.P.S.E.U.*, T/0016/77-1 (Feb. 16/78)

Procedure - One complainant not appearing, other not prepared to proceed - Failure to request adjournment ahead of time - Complaint dismissed - *Leclair & Czekierda and O.P.S.E.U.*, T/0071/91 (June 10/92)

Procedure - Parties not appearing for hearing - No adjournment requested - Complaint dismissed - *O.P.S.E.U. and Clancy et al. and Glenny et al.*, T/0001/89-2 (Nov. 7/90)

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Refusal to file grievance - Ambulance attendant disqualified from job due to medical condition - No breach of duty - *O.P.S.E.U. (Heard)*, T/0052/80 (Oct. 28/81)

Refusal to file grievance or seek extension of time limits - Whether arbitrary or discriminatory - Section 30 - *C.U.P.E. Local 767 and Ministry of Housing (Suppa)*, T/0018/88 (Sept. 8/89)

Refusal to pursue grievance - Claim of unfairness and favouritism - No particulars - No *prima facie* case - *Textile Processors etc. and Metropolitan Toronto Convention Centre (Ramji)*, T/0027/93 (Sept. 30/93)

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Settlement of discharge grievance without complainant's consent - Failure to arbitrate grievance - Complainant instructed union he would handle his own case - Decision not arbitrary - Section 30 - *Amalgamated Transit Union, Local 1587 and GO Transit (Francis)*, T/0015/86-2 (Jan. 19/90)

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Ambulance employees - Stay of proceedings sought pending judicial review in another case - *O.P.S.E.U. and Ministry of Health - Owen Sound Emergency Services Inc.*, T/0048/89-1 (Feb. 19/90)

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Ambulance Service - Whether Crown is employer - *O.P.S.E.U. and Ministry of Health - Owen Sound Emergency Services Inc.*, T/0048/89-2 (Mar. 19/90)

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Confidential employee - Unit Supervisor, District Office, Payroll/Personnel and Accounts Payable/Budget sections - Effect of maintenance of personnel and grievance files and some disciplinary involvement - S. 1(1)(vii) - *O.P.S.E.U. and Ministry of Transportation (Neely & Stewart)*, T/0067/89-2 (Dec. 9/91)

Correctional Officer 4 - Whether exercising significant supervisory authority - Whether involved in dealing with grievance procedure - Sections 1(1)(iii) and (iv) - *O.P.S.E.U. and Crown in Right of Ontario (Bethell)*, T/0009/76 (Apr. 6/77)

Court clerks, bailiffs and office staff of the Small Claims Court - Whether independent contractors - Application of various tests - *O.P.S.E.U. and Ministry of the Attorney General*, T/0055/84 (Jun. 24/88)

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Court clerks, bailiffs and office staff of Small Claims Court - Whether public servants - *O.P.S.E.U. and O.U.C.R. and Ministry of Attorney General*, T/0014/89 (Sept. 17/90)

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"Crown employees" - Court reporters provided through third party for special project - *O.P.S.E.U. and Ministry of the Attorney General (Atchison & Denman Court Reporting)*, T/0013/89 (Dec. 16/91)

"Crown employees" - Employees of the Office of the Assembly (Legislature) - Effect of amendments to Legislative Assembly Act - *O.P.S.E.U. and Ministry of Government Services*, T/0002/75 (Mar. 1/76)

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Freelance court reporters - Whether independent contractors or employees - *O.P.S.E.U. and Ont. Union of Court Reporters and Ministry of the Attorney General*, T/0064/84 (Sept. 20/88)

Freelance court reporters - Whether public servants - *O.P.S.E.U. and O.U.C.R. and Ministry of Attorney General*, T/0014/89 (Sept. 17/90)

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Independent contractors vs. employees - Tests - *O.P.S.E.U. and Ministry of Transportation (Sudbury Snow Plow Operators)*, T/0043/90 (Dec. 7/92)

Independent contractors vs. employees - Tests - *O.P.S.E.U. and Ministry of the Attorney General*, T/0055/84 (Jun. 24/88)

Independent contractors vs. employees - Tests - *O.P.S.E.U. and Ont. Union of Court Reporters and Ministry of the Attorney General*, T/0064/84 (Sept. 20/88)

Individual employee's right to apply for determination of status - Section 40(1) - *O.P.S.E.U. and Ministry of Correctional Services (Leutz et al.)*, T/0018/77 (May 15/78)

Industrial Development Officer 3 - Management consultant - Whether involvement in union would harm his effectiveness is assisting Ministry clients - Section 1(1)(l)(viii) - *O.P.S.E.U. and Ministry of Industry and Tourism (Williams)*, T/0010/76 (Dec. 23/77)

Interim ambulance service - Whether "project of a non-recurring kind" - Section 1(f)(vii) - *O.P.S.E.U. and Ministry of Health*, T/0027/85 (Jun. 8/87)

Jurisdiction of Tribunal - Whether crown agency issue res judicata where union certified by O.L.R.B. - *O.P.S.E.U. and Ministry of Health - McKechnie Ambulance Services Inc.*, T/0058/84-2 (Nov. 30/89)

Law Clerk - Whether employed in confidential capacity to excluded person - Whether access to confidential legal files barred bargaining unit membership - Whether Clerk "determined" claims - Sections 1(1)(l)(v) and (vi) - *Ministry of Attorney General (Pulford)*, T/0008/81 (Nov. 20/81)

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Maintenance handymen - Whether independent contractors - *C.U.P.E. Local 3096 and North Waterloo Housing Authority (Brown et al.)*, T/0021/85 (Mar. 20/87)

Management consultant classified as Industrial Development Officer 3 - Whether involvement in union would harm his effectiveness is assisting Ministry clients - Section 1(1)(l)(viii) - *O.P.S.E.U. and Ministry of Industry and Tourism (Williams)*, T/0010/76 (Dec. 23/77)

Managerial exclusions - Principles - Supervisor of Rehabilitation & Employment Programs - Sections 1(1)(l)(iii) and (iv) - *O.P.S.E.U. and Ministry of Community & Social Services (Lasani)*, T/0014/87 (May 2/89)

Managerial or confidential employees - Omnibus exclusion - Sections 1(1)(l)(ii), (iii), (iv) and (viii) - *O.P.S.E.U. and Ministry of the Attorney General (Sauve)*, T/0044/90 (Dec. 9/91)

Managerial or confidential employees - Scope of Tribunal's residual discretion under s. 1(1)(l)(viii) - *C.U.P.E. Local 1750 and Workmen's Compensation Board*, T/0009/73-3 (Jun. 20/75)

Managerial or confidential exclusions - General principles - Section 1(1)(l) - *O.P.S.E.U. and Crown in Right of Ontario (Welton)*, T/0003/76 (Apr. 6/77)

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Nursing assistant hired to help phase out hospital unit - Whether project of a non-recurring kind - Section 1(1)(f)(vii) - *O.P.S.E.U. and Ministry of Health (Lamey)*, T/0019/77 (May 12/78)

Occupational Health and Safety Advisors - Whether conflict of interest between duties and union membership - Scope of omnibus exclusion in s. 1(1)(l)(viii) - *O.P.S.E.U. and Ministry of Labour*, T/0053/87 (May 8/89)

Office Manager of jail - Whether supervisory or confidential - Whether responsible for grievance procedure - Sections 1(1)(l)(iii), (iv) and (vii) - *O.P.S.E.U. and Crown in Right of Ontario (Bertolo)*, T/0004/76 (Apr. 18/77)

Omnibus exclusion in s. 1(1)(l)(viii) - Scope - Occupational Health and Safety Advisors - *O.P.S.E.U. and Ministry of Labour*, T/0053/87 (May 8/89)

Onus of proof - Evidentiary onus - Effect of status quo - *O.P.S.E.U. and Ministry of Labour*, T/0053/87 (May 8/89)

Part-time work - Effect - *O.P.S.E.U. and Ministry of the Attorney General*, T/0055/84 (Jun. 24/88)

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Party chiefs of survey crews - Responsibility for field supervision - Whether "dealing formally" with grievance procedure - Sections 1(1)(l)(iii) and (iv) - *O.P.S.E.U. and Management Board of Cabinet / Ministry of Transportation and Communications (Cairns et al.)*, T/0031/81 (Apr. 6/83)

Position confidential to a manager - Secretary to Director of Forensic Sciences, Centre of Forensic Sciences - General principles of s. 1(1)(l)(vi) - *O.P.S.E.U. and Ministry of Solicitor General (Smith)*, T/0011/76 (Jun. 8/77)

Procedure - Non-suit motion - Whether moving party required to elect whether to call evidence - Ss. 38(13) and 40 - *O.P.S.E.U. and Ministry of Transportation (Neely & Stewart)*, T/0067/89-1 (May 13/91)

Procedure - Order of examination of witnesses - *O.P.S.E.U. and Ministry of Labour*, T/0053/87 (May 8/89)

Project of a non-recurring kind - Nursing assistant hired to help phase out hospital unit - Section 1(1)(f)(vii) - *O.P.S.E.U. and Ministry of Health (Lamey)*, T/0019/77 (May 12/78)

Provincial prosecutors - Whether real conflict of interest - Scope of omnibus exception in s. 1(1)(l)(viii) - *O.P.S.E.U. and Ministry of the Attorney General (Collins et al.)*, T/0066/84 (Apr. 14/88)

Provincial vs. federal jurisdiction - Aeronautic operation - Whether Crown employees within Public Service Act - Whether covered by Canada Labour Code - Not covered by C.E.C.B.A. - S. 1(1)(f) - *O.P.S.E.U. and Air-Dale Limited*, T/0063/90 (Apr. 7/92)

Regional Manager, Pressure Vessels Branch - Field staff supervisor - Whether exercising independent discretion and authority - Section 1(1)(l)(iii) - *O.P.S.E.U. and Ministry of Consumer and Commercial Relations (McWilliams)*, T/0006/76 (Apr. 6/77)

Rehabilitation Counsellors, Workmen's Compensation Board - Whether managerial or confidential - Sections 1(1)(l)(v), (vi) and (viii) - *C.U.P.E. Local 1750 and Workmen's Compensation Board*, T/0009/73-3 (Jun. 20/75)

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Seasonal tree planters/handlers - Whether excluded as temporary or casual employees - Whether working on a recurrent basis - Section 1(1)(f)(vi) - *O.P.S.E.U. and Management Board of Cabinet (Blythe et al.)*, T/0005/83 (Feb. 3/84)

Seasonal workers hired on tripartite project - Whether improperly laid off or not recalled - *O.P.S.E.U. and Ministry of Natural Resources (Bruneau)*, T/0005/89 (July 23/90)

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Secretary to Director of Forensic Sciences, Centre of Forensic Sciences - Whether confidential to a manager - Section 1(1)(1)(vi) - *O.P.S.E.U. and Ministry of Solicitor General (Smith)*, T/0011/76 (Jun. 8/77)

Secretary to Executive Officer, Office of the Commissioner, Ontario Provincial Police - Sections 1(1)(1)(vi) and (viii) - *O.P.S.E.U. and Ministry of Solicitor General (Poltajainen)*, T/0031/84-2 (Jun. 4/85)

Security guards provided through "contracting-in" arrangement - Issue of true employer - Control test - *Ont. Liquor Boards Employees Union and L.C.B.O. and L.L.B.O (Manpower Temporary Services and Olsten Temporary Services, Intervenors)*, T/0019/85 (Mar. 30/89)

Security officer and Safety Security Officer - Exclusion from bargaining unit under s. 1(1)(1)(viii) - *C.U.P.E. Local 1750 and Workers' Compensation Board (Romain)*, T/0023/83 (Aug. 9/84)

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Settlement of employee status application - Right to enforce settlement - Procedure - S. 32(5) - *O.P.S.E.U. and Ministry of Government Services*, T/0059/91-1 (Jan. 19/93)

Sheriff's officers ("fee officers") - Whether employees or independent contractors - Tests to be applied - Section 1(1)(f) - *O.P.S.E.U. and Ministry of the Attorney General (Sheriff's Officers)*, T/0026/87 (Dec. 20/89)

Snowplow contractors - Whether independent contractors or employees - *O.P.S.E.U. and Ministry of Transportation (Sudbury Snow Plow Operators)*, T/0043/90 (Dec. 7/92)

Snowplow relief drivers - Whether employees of Crown or contractors - *O.P.S.E.U. and Ministry of Transportation (Sudbury Snow Plow Operators)*, T/0043/90 (Dec. 7/92)

Supervisor, Clinical Stenographic Services - Whether managerial - Whether dealing formally with grievances - Sections 1(1)(1)(iii) and (iv) - *O.P.S.E.U. and Ministry of Health (Silverthorne)*, T/0030/87-2 (Jul. 27/89)

Supervisor of Rehabilitation & Employment Programs - Whether managerial - Sections 1(1)(1)(iii) and (iv) - *O.P.S.E.U. and Ministry of Community & Social Services (Lasani)*, T/0014/87 (May 2/89)

Supervisors - Proposed unit of all supervisors - Excluded employees - Tribunal's discretion - S. 1(1)(1) - *Ont. Assoc. of Correctional Managers and Ministry of Correctional Services (O.P.S.E.U., Intervenor)*, T/0025/91 (Jan. 23/92)

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Supervisory employee - Unit Supervisor, District Office, Payroll/Personnel and Accounts Payable/Budget sections - Whether supervision involving exercising effective control - S. 1(1)(l)(iii) - *O.P.S.E.U. and Ministry of Transportation (Neely & Stewart)*, T/0067/89-2 (Dec. 9/91)

Temporary employee - Assignment lasting over two years - Principles affecting temporary employee exclusion - Section 1(1)(f) - *O.P.S.E.U. and Ministry of Colleges and Universities (Gordner)*, T/0005/76 (Nov. 24/76)

Temporary or casual employees hired through G.O. Temporary and external agencies - Meaning of "temporary" - Meaning of s. 1(1)(f)(vii) - *Ont. Liquor Boards Employees Union and L.C.B.O. and L.L.B.O (Manpower Temporary Services and Olsten Temporary Services, Intervenors)*, T/0019/85 (Mar. 30/89)

Timing of application - Applicant no longer employed - Section 40(1) - *O.P.S.E.U. and Ministry of Solicitor General (Poltajainen)*, T/0031/84-1 (Nov. 30/84)

University students working weekends - Not employed during "regular vacation period" - Section 1(1)(f) - *O.P.S.E.U. and Management Board of Cabinet (Cole et al.)*, T/0005/84 (Dec. 13/84)

Victim/Witness Coordinator, Sudbury Office - Whether managerial - Sections 1(1)(l)(ii), (iii), (iv) and (viii) - *O.P.S.E.U. and Ministry of the Attorney General (Sauve)*, T/0044/90 (Dec. 9/91)

Ward Supervisors at Penetanguishene Mental Health Centre - Significant managerial duties on overtime shifts and on weekends - Sections 1(1)(l)(iii) and (iv) - *O.P.S.E.U. and Ministry of Health (Atwood et al.)*, T/0057/84 (Sept. 21/87)

HEALTH AND SAFETY

Bargaining proposal requiring information to be provided to women, and consequences of refusal to work, allowed - Sections 7 and 18 - *O.P.S.E.U. and Crown in Right of Ontario, T/0032/81-1 (May 17/82)*

Bargaining proposal to ban certain employees from working alone allowed.- Sections 7 and 18 - *O.P.S.E.U. and Crown in Right of Ontario, T/0019/84-1 (Oct. 4/84)*

Bargaining proposal to increase testing and provide adjustable furniture for VDT users allowed - Sections 7 and 18 - *O.P.S.E.U. and Crown in Right of Ontario, T/0019/84-1 (Oct. 4/84)*

Bargaining proposal to limit electronic monitoring allowed - *O.P.S.E.U. and Management Board of Cabinet, T/0037/88 (Jul. 21/89)*

Bargaining proposal to prohibit certain employees from working alone allowed - Sections 7 and 18 - *O.P.S.E.U. and Crown in Right of Ontario, T/0032/81-1 (May 17/82)*

Bargaining proposals - Validity of numerous proposals decided - Ss. 7, 18 - *C.U.P.E. Local 1750 and Workers' Compensation Board, T/0001/85-1 (Nov. 26/85)*

Health and Safety Committee - Interference in employee's access and participation - Unfair labour practice - Sections 29(1) and 29(2)(c) - *O.P.S.E.U. and Ministry of Natural Resources (Millar), T/0063/89 (Nov. 1/91)*

HIRING

Bargaining proposal to give preference to current part-timers for full-time jobs - Proposal valid - *Amalgamated Transit Union, Local 1587 and Toronto Area Transit Operating Authority, T/0009/85 (Dec. 3/85)*

HOURS OF WORK

Bargaining proposal that employees be allowed to choose between work start and finish times allowed - Sections 7 and 18 - *O.P.S.E.U. and Crown in Right of Ontario, T/0019/84-1 (Oct. 4/84)*

Bargaining proposal to establish overtime roster and offer overtime on basis of seniority allowed - *O.P.S.E.U. and Management Board of Cabinet, T/0037/88 (Jul. 21/89)*

INTEREST ARBITRATION

Proposal to submit issues to interest arbitration during currency of collective agreement - Not proper matter for collective bargaining - *C.U.P.E. Local 1750 and Workers' Compensation Board*, T/0001/85-2 (Apr. 16/86)

Tribunal's role to determine whether submissions are within scope of collective bargaining - Section 40(2) - *O.P.S.E.U. and Crown in Right of Ontario*, T/0019/84-2 (Jan. 28/85)

INTERFERENCE WITH UNION

Complaint against union - Whether s.29(1)(2) supports a complaint against union - *O.P.S.E.U. and Ministry of Government Services (Glenny and Gondor)*, T/0008/87-2 (Mar. 13/90)

Employer dealing directly with employees to extend grievance time limits - *O.P.S.E.U. and Ministry of Health*, T/0037/86-2 (Dec. 2/87)

Failure to deal with union at Stage 2 of grievance procedure - Direct dealing authorized by collective agreement - S.29(1) - *O.P.S.E.U. and Ministry of Community and Social Services*, T/0036/85 (Feb. 27/87)

Lack of union representation - Remedies - Proper forum - Section 29(1) - *Ministry of Correctional Services (Kiviloo)*, T/0005/88 (Nov. 4/88)

Local union president denied secondment - Whether anti-union animus - Section 29 - *O.P.S.E.U. and Ministry of Government Services et al. (Glenny)*, T/0026/88 (Feb. 20/90)

Locking of guard huts - Whether penalty for grievance - Whether intimidation - Section 29(2)(c) - *O.P.S.E.U. and Ministry of Correctional Services (Miller)*, T/0055/89 (May 29/90)

Manager making negative comments about employees joining bargaining unit - Mitigating circumstances and no anti-union motive - Remedy - Sections 26 and 29 - *O.P.S.E.U. and Ministry of Northern Affairs*, T/0017/78 (Apr. 30/79)

Reorganization and downgrading of position - New position not requiring travel to aid complainant in performing union duties - Whether reorganization or downgrading breach of s. 29(1), (2)(a) or (2)(c) - *O.P.S.E.U. and Ministry of Government Services (Anwyll)*, T/0007/85 (Mar. 29/89)

Suspension of local union president pending sexual harassment investigation - Fear of interference not justifying lengthy suspension - Interim reinstatement order - *O.P.S.E.U. and Ministry of Correctional Services (Villella)*, T/0072/92 (July 14/93)

INTERFERENCE WITH WITNESSES

Employer threatening to discipline employees who wouldn't cooperate in investigation of arbitration case - No improper motive to prevent employees from participating in hearing - Section 37 - *O.P.S.E.U. and Ministry of Health, T/0017/83 (Sept. 10/85)*

Sexual harassment investigation - Fear of interference not justifying lengthy suspension of accused local union president - Interim reinstatement order - *O.P.S.E.U. and Ministry of Correctional Services (Villella), T/0072/92 (July 14/93)*

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Condemnation and criticism due to settlement of grievance - Refusal to make acting appointment permanent - Remedy - Section 29(2) - *O.P.S.E.U. and Ministry of Community and Social Services (Frawley), T/0015/88 (Apr. 29/93)*

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Employer threatening to discipline employees who wouldn't cooperate in investigation of arbitration case - No improper motive to prevent employees from participating in hearing - Section 37 - *O.P.S.E.U. and Ministry of Health, T/0017/83 (Sept. 10/85)*

Health and Safety Committee - Interference in employee's access and participation - Unfair labour practice - Sections 29(1) and 29(2)(c) - *O.P.S.E.U. and Ministry of Natural Resources (Millar), T/0063/89 (Nov. 1/91)*

Locking of guard huts - Whether penalty for grievance - Whether interference - Section 29(2)(c) - *O.P.S.E.U. and Ministry of Correctional Services (Miller), T/0055/89 (May 29/90)*

Minister publicly threatening not to comply with G.S.B. decision reinstating grievor - Intimidation, coercion and threats - Sections 29(2)(c) and 29(3) - *O.P.S.E.U. and Ministry of Community and Social Services, T/0007/84 (Aug. 31/84)*

JOB DESCRIPTIONS

Bargaining authority - Sections 7 and 18 - *C.U.P.E. Local 767 and O.P.S.E.U. and Crown in Right of Ontario, T/0007/78 (Feb. 28/79)*

Bargaining proposal to establish joint review committee - Proposal valid - Ss. 7, 18 - *Amalgamated Transit Union, Local 1587 and Toronto Area Transit Operating Authority, T/0009/85 (Dec. 3/85)*

JOB EVALUATION

Bargaining authority - Whether limited to bargaining external system or whether entitled to bargain on components - Whether proposed grading system legitimate - Right to bargain job descriptions - Sections 7 and 18 - *C.U.P.E. Local 767 and O.P.S.E.U. and Crown in Right of Ontario, T/0007/78 (Feb. 28/79)*

Bargaining proposal to eliminate electronic monitoring allowed as matter of health and safety - *O.P.S.E.U. and Management Board of Cabinet, T/0037/88 (Jul. 21/89)*

Bargaining proposal to forbid machine monitoring disallowed - Sections 7 and 18 - *O.P.S.E.U. and Crown in Right of Ontario, T/0032/81-1 (May 17/82)*

Bargaining proposals about frequency, form and employer's use of appraisals invalid - *Amalgamated Transit Union, Local 1587 and Toronto Area Transit Operating Authority, T/0009/85 (Dec. 3/85)*

JOB EVALUATION SYSTEM

Bargaining authority - Sections 7 and 18 - *C.U.P.E. and Workers' Compensation Board, T/0040A/84 (Mar. 22/85)*

Bargaining authority - Whether limited to bargaining external system or whether entitled to bargain on components - Whether proposed grading system legitimate - Right to bargain job descriptions - Sections 7 and 18 - *C.U.P.E. Local 767 and O.P.S.E.U. and Crown in Right of Ontario, T/0007/78 (Feb. 28/79)*

Bargaining proposals - Aspects subject to bargaining - Management rights - Ss.7 and 18(1) - *C.U.P.E. and Ontario Housing Corp., T/0034/86 (Dec. 30/87)*

Machine monitoring - Bargaining proposal to forbid monitoring disallowed - Sections 7 and 18 - *O.P.S.E.U. and Crown in Right of Ontario, T/0019/84-2 (Jan. 28/85)*

JOB POSTING

Bargaining proposal to increase area of search allowed - *O.P.S.E.U. and Management Board of Cabinet, T/0037/88 (Jul. 21/89)*

JOINT COMMITTEE

Apprenticeship - Bargaining proposal to establish committee disallowed - *Amalgamated Transit Union, Local 1587 and Toronto Area Transit Operating Authority, T/0009/85 (Dec. 3/85)*

Bargaining proposal for joint committee to allocate funds and assign training disallowed - Sections 7 and 18 - *O.P.S.E.U. and Crown in Right of Ontario, T/0019/84-1 (Oct. 4/84)*

Bargaining proposal to deal with sexual harassment through joint action committee allowed to extent it didn't infringe employer's right to discipline - Sections 7 and 18 - *O.P.S.E.U. and Crown in Right of Ontario, T/0019/84-1 (Oct. 4/84)*

Bargaining proposal to establish joint committee to review privatized/contracted out undertakings allowed - *O.P.S.E.U. and Management Board of Cabinet, T/0037/88 (Jul. 21/89)*

Bargaining proposal to establish joint job description committee allowable - Ss. 7, 18 - *Amalgamated Transit Union, Local 1587 and Toronto Area Transit Operating Authority, T/0009/85 (Dec. 3/85)*

Bargaining proposal to set up joint study of pre- and post-retirement matters - Allowed on basis that "post-retirement" referred to current employees only - Sections 7 and 18 - *O.P.S.E.U. and Crown in Right of Ontario, T/0019/84-1 (Oct. 4/84)*

JURISDICTION OF BOARD OF ARBITRATION

Bargaining authority - Effect on Tribunal of board of arbitration decision on bargaining authority - *O.P.S.E.U. and Crown in Right of Ontario, T/0032/81-1 (May 17/82)*

Bargaining authority - Jurisdiction to decide bargaining authority issues - Effect of parties' consent - Time period during which parties can apply to Tribunal - Section 40(2) - *C.U.P.E. Local 1750 and Workmen's Compensation Board, T/0019/81 (Jan 24/83)*

Bargaining authority - Jurisdiction to decide bargaining authority issues - Time period during which parties can apply to Tribunal - Section 40(2) - *Ont. Liquor Boards Employees' Union and Liquor Control Board of Ont. et al., T/0028/81 (Jan. 24/83)*

Bargaining authority - Jurisdiction to decide whether proposals are within scope of collective bargaining and therefore arbitrable - Powers of Tribunal vs. powers of board of arbitration - Sections 10 and 39 - *Civil Service Association of Ontario, Inc. and Ontario Council of Regents, T/0001/74 (Mar. --/74)*

JURISDICTION OF BOARD OF ARBITRATION cont'd

Complaint of delay in implementing Grievance Settlement Board award - Matter properly before Board, not Tribunal - *O.P.S.E.U. and Ministry of Government Services (Catherwood et al.)*, T/0014/91 (Mar. 3/92)

Representation rights - Effect of voluntary recognition - *Ont. Liquor Boards Employees' Union and Liquor Control Board of Ont.*, T/0071/84 (May 14/85)

Unfair labour practice - Refusal to employ - Non-renewal of contract - Whether Tribunal has jurisdiction - S. 29(2)(a) - *O.P.S.E.U. and Ministry of Correctional Services (Ikumsah)*, T/0094/92 (Sept. 29/93)

JURISDICTION OF TRIBUNAL

Bargaining authority - Effect on Tribunal of board of arbitration decision on bargaining authority - *O.P.S.E.U. and Crown in Right of Ontario*, T/0032/81-1 (May 17/82)

Bargaining authority - Jurisdiction to decide whether proposals are within scope of collective bargaining and therefore arbitrable - Powers of Tribunal vs. powers of board of arbitration - Sections 10 and 39 - *Civil Service Association of Ontario, Inc. and Ontario Council of Regents*, T/0001/74 (Mar. --/74)

Certification - Appropriateness of all employee unit vs. smaller unit - Effect of section 3 and O. Reg. 577/72 defining bargaining unit - Extent of Tribunal's jurisdiction - *O.P.S.E.U. and Metropolitan Housing Authority*, T/0021/80-1 (Mar. 18/81)

Certification - Determination of appropriate bargaining unit where two unions claiming existing bargaining rights - *O.P.S.E.U. and Metropolitan Toronto Housing Authority (C.U.P.E., intervener)*, T/0008/90-1 (July 30/90)

Complaint of delay in implementing Grievance Settlement Board award - Matter properly before Board, not Tribunal - *O.P.S.E.U. and Ministry of Government Services (Catherwood et al.)*, T/0014/91 (Mar. 3/92)

Duty of fair representation - Internal union affairs - Scope of s.30 - *O.P.S.E.U. and Ministry of Government Services (Glenny and Gondor)*, T/0008/87-2 (Mar. 13/90)

Employee status - Whether crown agency issue res judicata where union certified by O.L.R.B. - *O.P.S.E.U. and Ministry of Health - McKechnie Ambulance Services Inc.*, T/0058/84-2 (Nov. 30/89)

Interest arbitration submissions - Tribunal's role to determine whether submissions are within scope of collective bargaining - Section 40(2) - *O.P.S.E.U. and Crown in Right of Ontario*, T/0019/84-2 (Jan. 28/85)

JURISDICTION OF TRIBUNAL cont'd

Interference with union - Lack of union representation - Remedies - Proper forum - Section 29(1) - *Ministry of Correctional Services (Kiviloo)*, T/0005/88 (Nov. 4/88)

Procedure - Tribunal's right to set own procedure - Whether Tribunal obligated to keep verbatim record of proceedings - *O.P.S.E.U. and Clancy et al. and Glenny et al.*, T/0001/89-1 (July 3/90)

Procedure - Witnesses - Payment of conduct money - *O.P.S.E.U. and Ministry of Government Services (Glenny and Gondor)*, T/0008/87-2 (Mar. 13/90)

Provincial vs. federal jurisdiction - Aeronautic operation - Whether Crown employees within Public Service Act - Whether covered by Canada Labour Code - Not covered by C.E.C.B.A. - S. 1(1)(f) - *O.P.S.E.U. and Air-Dale Limited*, T/0063/90 (Apr. 7/92)

Religious exemption from union dues - Jurisdiction to order retroactive exemption - *Civil Service Association of Ontario Inc. and Crown in Right of Ontario (Taggart)*, T/0011/74 (Oct. 27/75)

Successor rights - Standard for judicial review - Successor Rights (Crown Transfers) Act - *O.P.S.E.U. and Ministry of Health et al.*, T/0086/84-2 (Jan. 11/89)

Unfair labour practice complaint - Deferral of Tribunal to arbitration process - *O.P.S.E.U. and Ministry of Government Services*, T/0041/87 (Jul. 12/88)

Unfair labour practice complaint - Interpretation of collective agreement in dispute - *O.P.S.E.U. and Ministry of Health*, T/0037/86-1 (Jul. 3/87)

Unfair labour practice complaint - Previous settlement - Whether res judicata - Whether Tribunal had jurisdiction to hear second complaint identical to earlier complaint which was withdrawn - *O.P.S.E.U. and Ministry of Correctional Services (Cameron)*, T/0018/89 (May 16/90)

Unfair labour practice - Refusal to employ - Non-renewal of contract - Whether Tribunal has jurisdiction - S. 29(2)(a) - *O.P.S.E.U. and Ministry of Correctional Services (Ikumsah)*, T/0094/92 (Sept. 29/93)

Unfair labour practice complaint - Relationship to discrimination grievance - Issue estoppel - *O.P.S.E.U. and Ministry of Education (Klassen)*, T/0047/88-2 (Feb. 26/93)

Unfair labour practice complaint - Relationship to discrimination grievance - Res judicata - *O.P.S.E.U. and Ministry of Natural Resources (Desi)*, T/0017/91 (Oct. 22/92)

LAYOFF

Bargaining proposal requiring surplus employees be kept on payroll and retrained until vacancy available - Proposal disallowed - Sections 7 and 18 - *O.P.S.E.U. and Crown in Right of Ontario, T/0019/84-2 (Jan. 28/85)*

Bargaining proposal that employees be retrained rather than laid off allowed - Sections 7 and 18 - *O.P.S.E.U. and Crown in Right of Ontario, T/0032/81-1 (May 17/82)*

Termination of appointment - Unclassified employees - Bumping, seniority rights - Union's right to bargain on appointments and reappointments - *O.P.S.E.U. and Crown in Right of Ontario, T/0032/81-4 (July 28/82)*

Termination of appointment - Unclassified employees - Bumping, seniority rights - Union's right to bargain on appointments and reappointments - Meaning of "reappointment" - *O.P.S.E.U. and Crown in Right of Ontario, T/0032/81-5 (Nov. 16/83)*

PART-TIME EMPLOYEES

Bargaining proposal for preferential hiring rights for full-time jobs - Proposal valid - *Amalgamated Transit Union, Local 1587 and Toronto Area Transit Operating Authority, T/0009/85 (Dec. 3/85)*

Bargaining proposals limiting right to hire, right to assign overtime work and right to assign work at different locations- Proposals invalid - *Amalgamated Transit Union, Local 1587 and Toronto Area Transit Operating Authority, T/0009/85 (Dec. 3/85)*

Bargaining unit - Single unit for part-time and full-time employees - Onus on employer to show single unit inappropriate - Onus not met - *O.P.S.E.U. and City Ambulance Service of Quinte Ltd., T/0074-92-3 (Sept. 29/93)*

Effect on employee status - *O.P.S.E.U. and Ministry of the Attorney General, T/0055/84 (Jun. 24/88)*

Pensions - See SUPERANNUATION

PROBATIONARY PERIOD

Bargaining proposal to affect probationary periods for seasonal employees disallowed - *O.P.S.E.U. and Management Board of Cabinet, T/0037/88 (Jul. 21/89)*

Bargaining proposal to reduce length of probationary period disallowed - Section 18 - *O.P.S.E.U. and Crown in Right of Ontario, T/0032/81-1 (May 17/82)*

PROCEDURE

Adjournment - To obtain legal counsel - *O.P.S.E.U. and Ministry of Government Services (Glenny and Gondor)*, T/0008/87-1 (Mar. 30/89)

Adjournment of hearing - Witnesses on vacation but no claim witnesses unavailable - Adjournment refused - *Canadian Union of Housing Employees, Local 1983 and Metropolitan Toronto Housing Authority*, T/0022/85-2 (Oct. 10/86)

Affidavits - Order to file affidavits detailing compliance with earlier order to destroy documents - Whether affidavits sufficient - *O.P.S.E.U. and Ministry of Solicitor General (Walker)*, T/0028/86-2 (Jun. 27/89)

Amendment of complaint - Absence of key allegation - *O.P.S.E.U. and Ministry of Health*, T/0076/92 (July 6/93)

Appointment as a public servant - Procedure for appointment to classified and unclassified service - *O.P.S.E.U. and O.U.C.R. and Ministry of Attorney General*, T/0014/89 (Sept. 17/90)

Bargaining authority application - Time period during which parties can apply to Tribunal - Arbitration Board's jurisdiction to decide matters - Section 40(2) - *Ont. Liquor Boards Employees' Union and Liquor Control Board of Ont. et al.*, T/0028/81 (Jan. 24/83)

Bargaining authority application - Time period during which parties can apply to Tribunal - Arbitration Board's jurisdiction to decide matters on parties' consent - Section 40(2) - *C.U.P.E. Local 1750 and Workmen's Compensation Board*, T/0019/81 (Jan 24/83)

Bargaining authority referrals under s. 40(2) - Time limit - *Ont. Liquor Boards Employees' Union and Liquor Control Board of Ont.*, T/0071/84 (May 14/85)

Bias - Disparity in parties' financial status - Requests for particulars - Failed settlement discussions - Failure of union to attend pre-hearing meeting - No bias found - *O.P.S.E.U. and Ministry of Community and Social Services (Leclair)*, T/0015/90-1 (Feb. 7/91)

Certification - Appropriateness of bargaining unit - Evidence - *C.U.P.E. Local 1750 et al. and Workmen's Compensation Board*, T/0009/73-2 (Feb. 3/75)

Certification - Effect of delay - Tribunal's role - *C.U.P.E. and Workmen's Compensation Board*, T/0009/73-1 (Jun. 28/74)

Certification vote and counting of ballots - Whether irregularities requiring new vote - *Canadian Union of Housing Employees, Local 1983 and Metropolitan Toronto Housing Authority*, T/0022/85-2 (Oct. 10/86)

Consolidation of complaints - Considerations - *O.P.S.E.U. and Ministry of Health*, T/0076/92 (July 6/93)

PROCEDURE cont'd

Delay - Certification - Effect - Tribunal's role - *C.U.P.E. and Workmen's Compensation Board*, T/0009/73-1 (Jun. 28/74)

Delay - Duty of fair representation - *O.P.S.E.U. and Ministry of Community and Social Services (Leclair)*, T/0015/90-2 (June 17/91)

Delay - Unfair labour practice and duty of fair representation complaints - Complaints dismissed due to lengthy delay without compelling reason - *O.P.S.E.U. and Ministry of Transportation (Maghsoudi)*, T/0060/87 (Dec. 2/88)

Delay - Unfair labour practice complaint - No prejudice to employer - Employer delaying in objecting to complaint - *O.P.S.E.U. and Ministry of Correctional Services (Waggoner)*, T/0003/86 (Feb. 11/87)

Delay - Unfair labour practice complaint of discrimination due to filing of grievances - Whether complainant could rely on grievances filed 3 and 6 years before complaint - *O.P.S.E.U. and Ministry of Education (Klassen)*, T/0047/88-1 (Oct. 21/90)

Duty of fair representation - Appointment of investigator - Duties of investigator - Section 32 - *O.P.S.E.U. Local 209 and O.P.S.E.U.*, T/0016/77-1 (Feb. 16/78)

Employee status - Individual employee's right to apply for determination of status - Section 40(1) - *O.P.S.E.U. and Ministry of Correctional Services (Leutz et al.)*, T/0018/77 (May 15/78)

Employee status application - Evidence - Representative witnesses- *C.U.P.E. Local 1750 and Workmen's Compensation Board*, T/0009/73-3 (Jun. 20/75)

Employee status application - Evidence - Representative witnesses - *O.P.S.E.U. and Management Board of Cabinet/Ministry of Transportation and Communications (Cairns et al.)*, T/0031/81 (Apr. 6/83)

Employee status application - Party proceeding first - Section 40(1) - *O.P.S.E.U. and Ministry of Health (Silverthorne)*, T/0030/87 (May 20/88)

Employee status application - Timing of application - Applicant no longer employed - Section 40(1) - *O.P.S.E.U. and Ministry of Solicitor General (Poltajainen)*, T/0031/84-1 (Nov. 30/84)

Employee status declaration - Effect - Retroactivity - *O.P.S.E.U. and Ministry of Health - Owen Sound Emergency Services Inc.*, T/0048/89-2 (Mar. 19/90)

Examination of witnesses - Employee status application - *O.P.S.E.U. and Ministry of Labour*, T/0053/87 (May 8/89)

Form of complaint - Absence of signature and date - *O.P.S.E.U. and Ministry of Health*, T/0076/92 (July 6/93)

PROCEDURE cont'd

General principles - *Civil Service Association of Ontario Inc. (Sisco)*, T/0005/74 (Oct. 24/74)

G.S.B. hearing pending - Alleged interference with union - Lack of union representation - Remedies - Proper forum - Section 29(1) - *Ministry of Correctional Services (Kiviloo)*, T/0005/88 (Nov. 4/88)

Interim order - Tribunal's jurisdiction to issue interim reinstatement order - *O.P.S.E.U. and Ministry of Correctional Services (Villella)*, T/0072/92 (July 14/93)

Legal counsel - Whether complainants' counsel to be paid by union and employer - *O.P.S.E.U. and Ministry of Government Services (Glenny and Gondor)*, T/0008/87-1 (Mar. 30/89)

Non-suit motion - Whether moving party required to elect whether to call evidence - Employee status application - Ss. 38(13) and 40 - *O.P.S.E.U. and Ministry of Transportation (Neely & Stewart)*, T/0067/89-1 (May 13/91)

Particulars - Complaint of unjust dismissal, and unfairness by union in failing to pursue grievance - No *prima facie* case - *Textile Processors etc. and Metropolitan Toronto Convention Centre (Ramji)*, T/0027/93 (Sept. 30/93)

Particulars - Duty of fair representation - Effect of statement of particulars - *O.P.S.E.U. and Ministry of Community and Social Services (Leclair)*, T/0015/90-2 (June 17/91)

Particulars - Multiple requests - Failed settlement discussions - Failure of union to attend pre-hearing meeting - Disparity in parties' financial status - No bias found - *O.P.S.E.U. and Ministry of Community and Social Services (Leclair)*, T/0015/90-1 (Feb. 7/91)

Particulars - Particularizing complaint by providing names, times, material facts, location - *O.P.S.E.U. and Ministry of Government Services (Glenny and Gondor)*, T/0008/87-2 (Mar. 13/90)

Parties not appearing for hearing - No adjournment requested - Complaint dismissed - *O.P.S.E.U. and Clancy et al. and Glenny et al.*, T/0001/89-2 (Nov. 7/90)

Parties not appearing for hearing - One complainant not appearing, other not prepared to proceed - Failure to request adjournment ahead of time - Complaint dismissed - *Leclair & Czekerda and O.P.S.E.U.*, T/0071/91 (June 10/92)

Precedents - Effect of prior Tribunal decisions - *O.P.S.E.U. and Ministry of Health - Owen Sound Emergency Services Inc.*, T/0048/89-2 (Mar. 19/90)

Pre-hearing vote - Whether properly ordered before finding of Crown agency - *O.P.S.E.U. and Lindsay & District Ambulance*, T/0045/91-1 (Apr. 8/91)

PROCEDURE cont'd

Pre-hearing vote - Whether properly ordered where employer's status in issue - *O.P.S.E.U. and Metropolitan Toronto Housing Authority et al. (C.U.P.E., Intervener)*, T/0060/89 (Sept 28/90)

Pre-hearing vote - Whether properly ordered where intervenor claiming it already has bargaining rights for employees - *O.P.S.E.U. and Metropolitan Toronto Housing Authority et al. (C.U.P.E., Intervener)*, T/0060/89 (Sept 28/90)

Preliminary ruling on respondent's reply not proper - *Civil Service Association of Ontario Inc. (Sisco)*, T/0005/74 (Oct. 24/74)

Preliminary rulings - Whether Tribunal should make where adjournment granted to obtain legal counsel - *O.P.S.E.U. and Ministry of Government Services (Glenny and Gondor)*, T/0008/87-1 (Mar. 30/89)

Production of documents referred to in complaints - *O.P.S.E.U. and Ministry of Government Services (Glenny and Gondor)*, T/0008/87-2 (Mar. 13/90)

Reconsideration - Tribunal's policy - Relevance of O.L.R.B. policy - S. 39 - *C.U.P.E. Local 1750 and Workers' Compensation Board*, T/0001/85-2 (Apr. 16/86)

Record of proceedings - Counsel's entitlement to tape record proceedings - *O.P.S.E.U. and Clancy et al. and Glenny et al.*, T/0001/89-1 (July 3/90)

Record of proceedings - Whether Tribunal obligated to keep verbatim record of proceedings - *O.P.S.E.U. and Clancy et al. and Glenny et al.*, T/0001/89-1 (July 3/90)

Relevance of O.L.R.B. jurisprudence - Decertification- *C.U.P.E. Local 767 (Williams et al.)*, T/0014/83-1 (Jan. 23/84)

Relevance of O.L.R.B. policy - Reconsideration - S. 39 - *C.U.P.E. Local 1750 and Workers' Compensation Board*, T/0001/85-2 (Apr. 16/86)

Relevance of other jurisprudence - *O.P.S.E.U. and Crown in Right of Ontario (Welton)*, T/0003/76 (Apr. 6/77)

Religious objection to union dues - Procedure where applicant unrepresented - Tribunal's role - *O.P.S.E.U. and Crown in Right of Ontario (Kruisselbrink)*, T/0018/75 (Jul. 8/76)

Right to counsel - Duty of union to provide representation for complainant in duty of fair representation case - *O.P.S.E.U. and Ministry of Community and Social Services (Leclair)*, T/0015/90-2 (Feb. 21/92)

Right to counsel or representation - Refusal to represent complainant in grievance as third party incumbent - No duty to provide representation to party adverse in interest - *Hartley and O.P.S.E.U.*, T/0085/91 (May 5/93)

PROCEDURE cont'd

Settlement of employee status application - Right to enforce settlement - S. 32(5) - *O.P.S.E.U. and Ministry of Government Services, T/0059/91-1 (Jan. 19/93)*

Stay of proceedings - Tests to be applied - Where issue before Divisional Court on judicial review - *O.P.S.E.U. and Ministry of Health - Owen Sound Emergency Services Inc., T/0048/89-1 (Feb. 19/90)*

Unfair labour practice - Form of complaint - Allegations must relate to breach of particular section of Act - Ss.29(1) and (2)(a) - *O.P.S.E.U. and Ministry of Correctional Services (Waggoner), T/0003/86 (Feb. 11/87)*

Unfair labour practice - Form of complaint - Deferral of Tribunal to arbitration process - O. Regs. 232 and 233 - *O.P.S.E.U. and Ministry of Government Services T/0041/87 (Jul. 12/88)*

Unfair labour practice - Form of complaint - Sufficiency of particulars - S. 29(2)(c) - *O.P.S.E.U. and Ministry of Transportation (Johnson), T/0040/90 (Mar. 18/91)*

Unfair labour practice - G.S.B. hearing pending - Alleged interference with union - Lack of union representation - Remedies - Proper forum - Section 29(1) - *Ministry of Correctional Services (Kiviloo), T/0005/88 (Nov. 4/88)*

Witnesses - Payment of conduct money - Tribunal's jurisdiction - *O.P.S.E.U. and Ministry of Government Services (Glenny and Gondor), T/0008/87-2 (Mar. 13/90)*

RECONSIDERATION

Tribunal's policy - Relevance of O.L.R.B. policy - S. 39 - *C.U.P.E. Local 1750 and Workers' Compensation Board, T/0001/85-2 (Apr. 16/86)*

RELIGIOUS OBJECTION

Atheist - Exemption for "beliefs" restricted to religious beliefs - Section 16(2) - *O.P.S.E.U. and Crown in Right of Ontario (Farmer)*, T/0001/76 (Oct. 28/76)

Canadian Reform Church - Exemption allowed - *O.P.S.E.U. and Ministry of Transportation and Communications (Evink)*, T/0016/87 (Jan. 12/88)

Designation of charity where parties cannot agree - *O.P.S.E.U. and Crown in Right of Ontario (Hart)*, T/0008/76 (Feb. 9/77)

Designation of charity where parties cannot agree - *O.P.S.E.U. and Crown in Right of Ontario (Appleton)*, T/0002/76 (Nov. 29/76)

Designation of charity where parties cannot agree - Applicant requesting charity and union not opposing request - *C.U.P.E. Local 1750 and Crown in Right of Ontario (Moore)*, T/0015/77-2 (Feb. 10/78)

Designation of charity where parties cannot agree - Principles - *O.P.S.E.U. and Ministry of Transportation and Communications (Cote)*, T/0001/77 (Mar. 30/77)

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Health and Safety Committee - Interference in employee's access and participation - Unfair labour practice - Sections 29(1) and 29(2)(c) - *O.P.S.E.U. and Ministry of Natural Resources (Millar)*, T/0063/89 (Nov. 1/91)

Intimidation - Locking of guard huts - Whether penalty for grievance - *O.P.S.E.U. and Ministry of Correctional Services (Miller)*, T/0055/89 (May 29/90)

Intimidation due to filing of grievance - *O.P.S.E.U. and Ministry of Solicitor General (Walker)*, T/0028/86 (Sept. 23/87)

Minister publicly threatening not to comply with G.S.B. decision reinstating grievor - Intimidation, coercion and threats - *O.P.S.E.U. and Ministry of Community and Social Services*, T/0007/84 (Aug. 31/84)

Reorganization and downgrading of position - New position not requiring travel to aid complainant in performing union duties - Whether reorganization or downgrading breach of s. 29(1), (2)(a) or (2)(c) - *O.P.S.E.U. and Ministry of Government Services (Anwyll)*, T/0007/85 (Mar. 29/89)

SECTION 29(3)

Minister publicly threatening not to comply with G.S.B. decision reinstating grievor - Intimidation, coercion and threats - *O.P.S.E.U. and Ministry of Community and Social Services*, T/0007/84 (Aug. 31/84)

SECTION 30

Duty of fair representation - Failure to negotiate to correct wage discrepancy - Lack of communication - Whether arbitrary or discriminatory - *O.P.S.E.U. and Hamilton Psychiatric Hospital - Ministry of Health (Hamilton et al.)*, T/0007/77 (Mar. 31/78)

Duty of fair representation - Refusal to file grievance or seek extension of time limits - Whether arbitrary or discriminatory - *C.U.P.E. Local 767 and Ministry of Housing (Suppa)*, T/0018/88 (Sept. 8/89)

Duty of fair representation - Refusal to pursue grievance - Standards - Whether arbitrary or discriminatory - *O.P.S.E.U. and Hamilton Psychiatric Hospital - Ministry of Health (Hamilton et al.)*, T/0007/77 (Mar. 31/78)

Duty of fair representation - Scope - Whether applies to internal union affairs - *O.P.S.E.U. and Ministry of Government Services (Glenny and Gondor)*, T/0008/87-2 (Mar. 13/90)

Duty of fair representation - Settlement of discharge grievance without complainant's consent - Decision not arbitrary - *Amalgamated Transit Union, Local 1587 and GO Transit (Francis)*, T/0015/86-2 (Jan. 19/90)

Duty of fair representation - Settlement of grievance - Whether settlement unfair to non-grievors - *Murdough and Ontario Liquor Boards Employees' Union*, T/0031/85 (Apr. 15/87)

Meaning of "arbitrary, discriminatory or in bad faith" - Teacher alleging he was mentally ill at time of resignation - *O.P.S.E.U. and Ministry of Education (Wilson)*, T/0076/84 (May 22/87)

SECTION 31

Illegal strike - Consent to prosecute - Consent granted - Section 35 - *O.P.S.E.U. and Crown in Right of Ontario*, T/0012/79 (Mar. /80)

SECTION 32

Duty of fair representation - Procedure - Appointment of investigator - Duties of investigator - Section 32(4) - *O.P.S.E.U. Local 209 and O.P.S.E.U.*, T/0016/77-1 (Feb. 16/78)

SECTION 32(4)

Duty of fair representation - Procedure - Appointment of investigator - *O.P.S.E.U. Local 209 and O.P.S.E.U.*, T/0016/77-1 (Feb. 16/78)

SECTION 32(5)

Effect of previous withdrawal of complaint - Whether Tribunal had jurisdiction to hear second complaint identical to earlier complaint which was withdrawn - *O.P.S.E.U. and Ministry of Correctional Services (Cameron)*, T/0018/89 (May 16/90)

Settlement of employee status application - Right to enforce settlement - Procedure - *O.P.S.E.U. and Ministry of Government Services*, T/0059/91-1 (Jan. 19/93)

SECTION 35

Illegal strike - Consent to prosecute - Consent granted - Section 31 - *O.P.S.E.U. and Crown in Right of Ontario*, T/0012/79 (Mar. /80)

SECTION 37

Employer threatening to discipline employees who wouldn't cooperate in investigation of arbitration case - No improper motive to prevent employees from participating in hearing - *O.P.S.E.U. and Ministry of Health*, T/0017/83 (Sept. 10/85)

SECTION 37(1)

Unfair labour practice - Discrimination - Actions constituting - Whether breach of Act - *O.P.S.E.U. and Ministry of Transportation (Maghsoudi)*, T/0060/87 (Dec. 2/88)

SECTION 38(13)

Discretion to set own procedure - Non-suit motion - Whether moving party required to elect whether to call evidence - Employee status application - *O.P.S.E.U. and Ministry of Transportation (Neely & Stewart)*, T/0067/89-1 (May 13/91)

Jurisdiction of Tribunal to set own procedure - Whether Tribunal obligated to keep verbatim record of proceedings - *O.P.S.E.U. and Clancy et al. and Glenny et al.*, T/0001/89-1 (July 3/90)

Procedure - Interim order - Tribunal's jurisdiction to issue interim reinstatement order - *O.P.S.E.U. and Ministry of Correctional Services (Villella)*, T/0072/92 (July 14/93)

SECTION 39

Bargaining authority - Jurisdiction to decide whether proposals are within scope of collective bargaining and therefore arbitrable - Powers of Tribunal vs. powers of board of arbitration - Section 10 - *Civil Service Association of Ontario, Inc. and Ontario Council of Regents*, T/0001/74 (Mar. --/74)

Jurisdiction of Tribunal - Certification - Determination of appropriate bargaining unit where two unions claiming existing bargaining rights - *O.P.S.E.U. and Metropolitan Toronto Housing Authority (C.U.P.E., intervener)*, T/0008/90-1 (July 30/90)

Procedure - Interim order - Tribunal's jurisdiction to issue interim reinstatement order - *O.P.S.E.U. and Ministry of Correctional Services (Villella)*, T/0072/92 (July 14/93)

Reconsideration - Factors making it not advisable to change decision - *O.P.S.E.U. and Ministry of Community and Social Services (MacLean)*, T/0014/84-2 (Jul. 25/86)

Reconsideration - Tribunal policy - Relevance of O.L.R.B. policy - *C.U.P.E. Local 1750 and Workers' Compensation Board*, T/0001/85-2 (Apr. 16/86)

SECTION 40

Procedure - Non-suit motion - Whether moving party required to elect whether to call evidence - *O.P.S.E.U. and Ministry of Transportation (Neely & Stewart)*, T/0067/89-1 (May 13/91)

SECTION 40(1)

Burden of proof - Employee status application - Evidentiary onus - Effect of status quo - *O.P.S.E.U. and Ministry of Labour*, T/0053/87 (May 8/89)

Burden of proof - Party proceeding first - *O.P.S.E.U. and Ministry of Health (Silverthorne)*, T/0030/87 (May 20/88)

Individual employee's right to apply for determination of status - *O.P.S.E.U. and Ministry of Correctional Services (Leutz et al.)*, T/0018/77 (May 15/78)

Seeking change in status quo - Effect of past practice - *O.P.S.E.U. and Ministry of Transportation (Neely & Stewart)*, T/0067/89-2 (Dec. 9/91)

Timing of application - Applicant no longer employed - Section 40(1) - *O.P.S.E.U. and Ministry of Solicitor General (Poltajainen)*, T/0031/84-1 (Nov. 30/84)

SECTION 40(2)

Bargaining proposals - Tribunal's role in determining whether submissions to interest arbitration board were within scope of collective bargaining - *O.P.S.E.U. and Crown in Right of Ontario, T/0019/84-2 (Jan. 28/85)*

Procedure - Time limit - *Ont. Liquor Boards Employees' Union and Liquor Control Board of Ont., T/0071/84 (May 14/85)*

Procedure - Time period during which parties can apply to Tribunal - Arbitration Board's jurisdiction to decide matters on parties' consent - *C.U.P.E. Local 1750 and Workmen's Compensation Board, T/0019/81 (Jan 24/83)*

Procedure - Time period during which parties can apply to Tribunal - Arbitration Board's jurisdiction to decide matters - *Ont. Liquor Boards Employees' Union and Liquor Control Board of Ont. et al., T/0028/81 (Jan. 24/83)*

Tribunal's supervision of interest arbitration board - Proposal to submit issues to interest arbitration during currency of collective agreement - Not proper matter for collective bargaining - *C.U.P.E. Local 1750 and Workers' Compensation Board, T/0001/85-2 (Apr. 16/86)*

SECTION 41(1)(d)

Certification - Bar on further applications - Principles - *Ontario Housing Employees', Local 767 and Ontario Housing Corp. et al., T/0001/73 (Oct. 11/73)*

Certification - Bar on further applications - Considerations - *C.U.P.E. and Workmen's Compensation Board, T/0009/73-1 (Jun. 28/74)*

SECTION 43

Jurisdiction of Tribunal to set own procedure - Whether Tribunal obligated to keep verbatim record of proceedings - *O.P.S.E.U. and Clancy et al. and Glennly et al., T/0001/89-1 (July 3/90)*

Procedure - Interim order - Tribunal's jurisdiction to issue interim reinstatement order - *O.P.S.E.U. and Ministry of Correctional Services (Villella), T/0072/92 (July 14/93)*

SECTION 50(3)

Procedure - Interim order - Tribunal's jurisdiction to issue interim reinstatement order - *O.P.S.E.U. and Ministry of Correctional Services (Villella), T/0072/92 (July 14/93)*

SECTION 51(1)

Certification - Appropriateness of bargaining unit - Evidence - Membership evidence - *C.U.P.E. Local 1750 et al. and Workmen's' Compensation Board, T/0009/73-2 (Feb. 3/75)*

SECTION 55

Form of complaint - Absence of signature and date - *O.P.S.E.U. and Ministry of Health, T/0076/92 (July 6/93)*

**ONTARIO PUBLIC SERVICE LABOUR RELATIONS TRIBUNAL
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| T/0001/73 | Oct. 11/73 | Certification; Dismissed | Yes |
| T/0002/73 - see T/0001/73 | | | |
| T/0003/73 - see T/0001/73 | | | |
| T/0009/73-1 | June 28/74 | Certification; Preliminary | Yes |
| T/0009/73-2 | Feb. 3/75 | Bargaining Unit Ruling | Yes |
| T/0009/73-3 | June 20/75 | Employee Status; Allowed in part | Yes |
| T/0001/74 | Mar./74 | Bargaining Authority; Dismissed | Yes |
| T/0002/74 - see T/0009/73-1 | | | |
| T/0002A/74 | Aug. 8/74 | Religious Objection; Allowed | Yes |
| T/0003/74-1 | Aug. 14/75 | Certification; Vote Ordered | No |
| T/0003/74-2 | Oct. 30/75 | Certified | No |
| T/0005/74 | Oct. 24/74 | Procedural Ruling | Yes |
| T/0011/74 | Oct. 27/75 | Religious Objection; Allowed | Yes |
| T/0014/74 | Jan. 16/76 | Dismissed | No |
| T/0002/75 | Mar. 1/76 | Employee Status; Dismissed | Yes |
| T/0003/75 | Nov. 12/76 | Religious Objection Reconsideration; Dismissed | No |
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| T/0005/75 | Dec. 11/75 | Dismissed | No |
| T/0006/75 | July 5/76 | Religious Objection; Allowed | Yes |
| T/0009/75 | July 5/76 | Religious Objection; Allowed | Yes |
| T/0010/75 | Dec. 11/75 | Dismissed | No |
| T/0012/75 | Nov. 29/76 | Religious Objection Ruling | Yes |
| T/0014/75 | July 5/76 | Religious Objection; Allowed | Yes |
| T/0015/75 | July 8/76 | Religious Objection; Allowed | Yes |
| T/0018/75 | July 8/76 | Religious Objection; Allowed | Yes |
| T/0019/75 | July 5/76 | Religious Objection; Allowed | Yes |
| T/0022/75 | July 8/76 | Religious Objection; Allowed | Yes |
| T/0001/76 | Oct. 28/76 | Religious Objection; Dismissed | Yes |
| T/0002/76 | Nov. 29/76 | Religious Objection Ruling | Yes |
| T/0003/76 | Apr. 6/77 | Employee Status; Allowed | Yes |
| T/0004/76 | Apr. 18/77 | Employee Status; Allowed | Yes |
| T/0005/76 | Nov. 24/76 | Employee Status; Dismissed | Yes |
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| T/0006/76 | Apr. 6/77 | Employee Status; Dismissed | Yes |
| T/0007/76 | Apr. 18/77 | Employee Status; Dismissed | Yes |
| T/0008/76 | Feb. 9/77 | Religious Objection Ruling | Yes |
| T/0009/76 | Apr. 6/77 | Employee Status; Dismissed | Yes |
| T/0010/76 | Dec. 23/77 | Employee Status; Allowed | Yes |
| T/0011/76 | June 8/77 | Employee Status; Dismissed | Yes |
| T/0014/76 | Apr. 18/77 | Employee Status; Settled | No |
| T/0015/76 | July 22/77 | Employee Status; Allowed | No |
| T/0001/77 | Mar. 30/77 | Religious Objection; Allowed | Yes |
| T/0003/77 | June 17/77 | Religious Objection; Allowed | No |
| T/0006/77 | Sept. 14/77 | Duty of Fair Representation; Dismissed | No |
| T/0007/77 | Mar. 17/78 | Duty of Fair Representation; Dismissed | Yes |
| T/0008/77 | July 22/77 | Dismissed | No |
| T/0012/77 | Nov. 14/77 | Religious Objection; Allowed | No |
| T/0013/77 | Nov. 24/77 | Religious Objection; Dismissed | Yes |

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| T/0015/77-1 | Nov. 14/77 | Religious Objection; Allowed | No |
| T/0015/77-2 | Feb. 10/78 | Religious Objection Ruling | Yes |
| T/0016/77-1 | Feb. 11/78 | Duty of Fair Representation; Investigator Appointed | Yes |
| T/0016/77-2 | Nov. 21/78 | Dismissed | No |
| T/0018/77 | May 15/78 | Employee Status; Dismissed | Yes |
| T/0019/77 | May 12/78 | Employee Status; Dismissed | Yes |
| T/0001/78 | Apr. 19/78 | Religious Objection; Dismissed | No |
| T/0005/78 | May 18/78 | Religious Objection; Allowed | No |
| T/0007/78 | Feb. 28/79 | Bargaining Authority; Allowed | Yes |
| T/0008/78 | Nov. 27/78 | Certification; Dismissed | Yes |
| T/0009/78 - see T/0007/78 | | | |
| T/0017/78 | Apr. 30/79 | Unfair Labour Practice; Dismissed | Yes |
| T/0018/78 - see T/0017/78 | | | |
| T/0002/79 | Apr. 30/79 | Successor Rights; Allowed | Yes |
| T/0005/79 | Aug. 30/79 | Religious Objection; Allowed | No |
| T/0006/79 | Oct. 1/79 | Trusteeship | No |
| T/0007/79 | Mar. 26/80 | Employee Status; Dismissed | Yes |

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|----------------------------|---------------------------|---|----------------|
| T/0011/79-1 T/0011/79-2 | June 23/80 Sept. 26/80 | Certification; Vote Ordered Dismissed | Yes Yes |
| T/0012/79 | Mar./80 | Unfair Labour Practice; Consent to Prosecute Granted | Yes |
| T/0002/80 | Apr. --/80 | Religious Objection; Dismissed | Yes |
| T/0005/80 | May 13/80 | Religious Objection; Allowed | No |
| T/0015/80 | May 13/80 | Religious Objection; Allowed | No |
| T/0020/80 | Sept. 15/80 | Religious Objection; Allowed | No |
| T/0021/80-1 T/0021/80-2 | Mar. 18/81 Sept. 23/81 | Certification; Preliminary Employee Status; Allowed | Yes Yes |
| T/0022/80 | Oct. 16/80 | Religious Objection; Allowed | No |
| T/0023/80 | Nov. 28/80 | Religious Objection; Allowed | No |
| T/0025/80 | Apr. 10/81 | Religious Objection; Allowed | Yes |
| T/0026/80 | Jan. 22/81 | Religious Objection; Allowed | No |
| T/0027/80 | Feb. 20/81 | Religious Objection; Settled | No |
| T/0028/80 | Nov. 28/80 | Religious Objection; Allowed | No |
| T/0030/80 | Feb. 27/81 | Religious Objection; Allowed | No |
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| T/0031/80 | Feb. 12/81 | Religious Objection; Allowed | Yes |
| T/0035/80 | Dec. 19/80 | Religious Objection; Allowed | No |
| T/0036/80 | Dec. 19/80 | Religious Objection; Allowed | No |
| T/0037/80 | Dec. 19/80 | Religious Objection; Allowed | No |
| T/0039/80 | Feb. 13/81 | Religious Objection; Dismissed | No |
| T/0042/80 | Feb. 2/81 | Religious Objection Ruling | Yes |
| T/0043/80 | Mar. 9/81 | Certification; Allowed | No |
| T/0052/80 | Oct. 28/81 | Duty of Fair Representation; Dismissed | Yes |
| T/0004/81 | Oct. 19/82 | Duty of Fair Representation; Dismissed | No |
| T/0008/81 | Nov. 20/81 | Employee Status; Allowed | Yes |
| T/0014/81 | Oct. 14/82 | Adjourned Sine Die | No |
| T/0019/81 | Jan. 24/83 | Bargaining Authority; Dismissed | Yes |
| T/0026/81 | undated | Religious Objection; Allowed | No |
| T/0028/81 | Jan. 24/83 | Bargaining Authority; Dismissed | Yes |

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| T/0030/81 | Mar. 2/82 | Religious Objection; Allowed | No |
| T/0031/81 | Apr. 6/83 | Employee Status; Dismissed | Yes |
| T/0032/81-1 | May 17/82 | Bargaining Authority Ruling | Yes |
| T/0032/81-2 | May 3/82 | Order | No |
| T/0032/81-3 | May 27/82 | Interim | No |
| T/0032/81-4 | July 28/82 | Further Ruling | Yes |
| T/0032/81-5 | Nov. 16/83 | Reconsideration | Yes |
| T/0003/82 - see T/0004/81 | | | |
| T/0019/82 | Nov. 16/82 | Employee Status; Allowed | No |
| T/0022/82 | Apr. 26/88 | Settled | No |
| T/0032/82 | Apr. 7/83 | Religious Objection; Allowed | No |
| T/0005/83 | Feb. 3/84 | Employee Status; Allowed | Yes |
| T/0008/83 | Feb. 17/84 | Duty of Fair Representation; Dismissed | Yes |
| T/0014/83-1 | Jan. 23/84 | Termination; Vote Ordered | Yes |
| T/0014/83-2 | Apr. 29/85 | Dismissed | No |
| T/0017/83 | Sept. 10/85 | Unfair Labour Practice; Dismissed | Yes |
| T/0023/83 | Aug. 9/84 | Employee Status; Dismissed | Yes |
| T/0005/84 | Dec. 13/84 | Employee Status; Allowed | Yes |
| T/0007/84 | Aug. 31/84 | Unfair Labour Practice; Allowed | Yes |
| T/0012/84 | Apr. 19/85 | Referred to G.S.B. | No |
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|--|---------------------------|--|------------|
| T/0013/84 | Aug. 9/84 | Employee Status; Dismissed | No |
| T/0014/84-1 | Dec. 18/85 | Religious Objection; Allowed in part | Yes |
| T/0014/84-2 | July 25/86 | Supplementary; Dismissed | Yes |
| T/0019/84-1 | Oct. 4/84 | Bargaining Authority; Allowed in part | Yes |
| T/0019/84-2 | Jan. 28/85 | Supplementary; Allowed in part | Yes |
| T/0031/84-1 | Nov. 30/84 | Employee Status; Preliminary; Allowed | Yes |
| T/0031/84-2 | June 4/85 | Dismissed | Yes |
| T/0040A/84 | Mar. 22/85 | Bargaining Authority; Dismissed | Yes |
| T/42/84 | May 29/86 | Trusteeship; Allowed | Yes |
| T/0054/84 | June 14/85 | Employee Status; Allowed | No |
| T/0055/84 T/0055/84 - see also T/0014/89 | Jun. 24/88 | Employee Status; Allowed | Yes |
| T/0057/84 | Sept. 21/87 | Employee Status; Dismissed | Yes |
| T/0058/84 T/0058/84-2 | May 28/86 Nov. 30/89 | Referred to Divisional Court Employee Status; Allowed | No Yes |
| T/0064/84 T/0064/84-2 T/0064/84 - see also T/0014/89 | Sept. 20/88 Jul. 13/89 | Employee Status; Dismissed Certification; Interim | Yes Yes |
| T/0065/84 - see T/0055/84 and T/0014/89 | | | |
| T/0066/84 | Apr. 14/88 | Employee Status; Allowed | Yes |

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| T/0071/84 | May 14/85 | Bargaining Authority; Allowed | Yes |
| T/0076/84 | May 22/87 | Duty of Fair Representation; Dismissed | Yes |
| T/0078/84 | June 14/85 | Employee Status; Allowed | No |
| T/0081/84 | July 25/85 | Employee Status; Dismissed | No |
| T/0084/84 | Jan. 7/85 | Religious Objection; Dismissed | Yes |
| T/0086/84-1 | Feb. 10/88 | Successor Rights; Dismissed | Yes |
| T/0086/84-2 | Jan. 11/89 | Div. Ct.; Dismissed | Yes |
| T/0088/84-1 | Oct. 3/85 | Certification; Referred to Registrar | No |
| T/0088/84-2 | Nov. 15/85 | Certification; Referred to Registrar | No |
| T/0001/85-1 | Nov. 26/85 | Bargaining Authority; Allowed in part | Yes |
| T/0001/85-2 | April 16/86 | Supplementary; Dismissed | Yes |
| T/003/85 | April 21/86 | Unfair Labour Practice; Consent Order | No |
| T/0007/85 | Mar. 29/89 | Unfair Labour Practice; Dismissed | Yes |
| T/0008/85-1 | Aug. 15/88 | Successor Rights; Allowed | Yes |
| T/0008/85-2 | Nov. 3/92 | Successor Rights; Interpretation | Yes |
| T/0008/85-3 | Aug. 24/93 | Successor Rights; Interpretation | Yes |
| T/009/85 | Dec. 3/85 | Bargaining Authority; Allowed in part | Yes |

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|---------------------------|------------|---|---------|
| T/0019/85 | Mar. 30/89 | Employee Status; Allowed in part | Yes |
| T/0020/85 | Feb. 13/86 | Certification; Allowed | No |
| T/0021/85 | Mar. 20/87 | Employee Status; Allowed | Yes |
| T/0022/85-1 | Feb. 11/86 | Certification; Preliminary; Allowed | Yes |
| T/0022/85-2 | Oct. 10/86 | Dismissed | Yes |
| T/0027/85 | June 8/87 | Successor Rights; Allowed | Yes |
| T/0031/85 | Apr. 15/87 | Duty of Fair Representation; Dismissed | Yes |
| T/0036/85 | Feb. 27/87 | Unfair Labour Practice; Dismissed | Yes |
| T/0037/85 - see T/0036/85 | | | |
| T/0039/85 | Nov. 3/86 | Religious Objection; Dismissed | No |
| T/0040/85 | Nov. 25/86 | Religious Objection; Dismissed | No |
| T/0003/86 | Feb. 11/87 | Unfair Labour Practice; Preliminary | Yes |
| T/0008/86-1 | Feb. 19/87 | Unfair Labour Practice; Preliminary | Yes |
| T/0008/86-2 | July 10/87 | Dismissed | Yes |
| T/0013/86 | Sept. 8/88 | Employee Status; Allowed in part | Yes |
| T/0015/86 | Feb. 16/87 | Adjourned Sine Die | No |
| T/0015/86-2 | Jan. 19/90 | Duty of Fair Representation; Dismissed | Yes |

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T/0018/86 - see T/0064/84 and T/0014/89

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| T/0027/86 | July 24/87 | Employee Status; Dismissed | Yes |
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| T/0028/86 | Sept. 23/87 | Unfair Labour Practice; Allowed in part | Yes |
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| T/0028/86-2 | June 27/89 | Unfair Labour Practice; Supplementary | Yes |
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T/0029/86 - see T/0028/86

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| T/0034/86 | Dec. 30/87 | Bargaining Authority; Allowed in part | Yes |
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| T/0037/86-1 | July 3/87 | Unfair Labour Practice; Preliminary | Yes |
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| T/0037/86-2 | Dec. 2/87 | Dismissed | Yes |
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| T/0001/87 | Dec. 24/87 | Adjourned Sine Die | No |
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| T/0008/87-1 | Mar. 30/89 | Unfair Labour Practice; Interim | Yes |
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| T/0008/87-2 | Mar. 13/90 | Unfair Labour Practice; Dismissed in part | Yes |
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| T/0014/87 | May 2/89 | Employee Status; Dismissed | Yes |
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| T/0016/87 | Jan. 12/88 | Religious Objection; Allowed | Yes |
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| T/0017/87 | Jan. 22/88 | Unfair Labour Practice; Dismissed | No |
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| T/0026/87 | Dec. 20/89 | Employee Status; Allowed | Yes |
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| T/0030/87 | May 20/88 | Employee Status; Procedural Ruling | Yes |
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| T/0030/87-2 | Jul. 27/89 | Dismissed | Yes |
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| T/0033/87 | Mar. 7/88 | Religious Objection; Allowed | Yes |
| T/0038/87 | Feb. 18/88 | Unfair Labour Practice; Settled | No |
| T/0041/87 | Jul. 12/88 | Unfair Labour Practice; Preliminary | Yes |
| T/0041/87-2 | Jun. 15/89 | Withdrawn | No |
| T/0053/87 | May 8/89 | Employee Status; Dismissed | Yes |
| T/0060/87 | Dec. 2/88 | Unfair Labour Practice; Dismissed | Yes |
| T/0005/88 | Nov. 4/88 | Unfair Labour Practice; Adjourned pending G.S.B. decision | Yes |
| T/0015/88 | Apr. 29/93 | Unfair Labour Practice; Allowed | Yes |
| T/0016/88 | Jun. 23/89 | Unfair Labour Practice; Dismissed | Yes |
| T/0018/88 | Sept. 8/89 | Duty of Fair Representation; Dismissed | Yes |
| T/0025/88 | Feb. 21/89 | Duty of Fair Representation; Dismissed | No |
| T/0026/88 | Feb. 20/90 | Unfair Labour Practice; Dismissed | Yes |
| T/0037/88 | Jul. 21/89 | Bargaining Authority, Allowed in part; Unfair Labour Practice, Dismissed | Yes |
| T/0047/88-1 | Oct. 21/90 | Unfair Labour Practice; Preliminary | Yes |
| T/0047/88-2 | Feb. 26/93 | Unfair Labour Practice; Dismissed | Yes |
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| T/0049/88 | Jul. 17/89 | Religious Objection; Allowed | Yes |
| T/0052/88 | Oct. 10/89 | Certification; Allowed | No |
| T/0001/89-1 | July 3/90 | Duty of Fair Representation; Preliminary | Yes |
| T/0001/89-2 | Nov. 7/90 | Dismissed | Yes |
| T/0002/89 - see T/0001/89 | | | |
| T/0005/89 | July 23/90 | Employee Status; Dismissed | Yes |
| T/0007/89 - see T/0001/89 | | | |
| T/0013/89 | Dec. 16/91 | Employee Status; Dismissed | Yes |
| T/0014/89-1 | May 17/90 | Employee Status; Order | No |
| T/0014/89-2 | Sept. 17/90 | Allowed | Yes |
| T/0018/89 | May 16/90 | Unfair Labour Practice; Preliminary | Yes |
| T/0030/89 - see T/0001/89 | | | |
| T/0048/89-1 | Feb. 19/90 | Unfair Labour Practice; Interim | Yes |
| T/0048/89-2 | Mar. 19/90 | Unfair Labour Practice; Dismissed; Employee Status; Allowed | Yes |
| T/0055/89 | May 29/90 | Unfair Labour Practice; Allowed | Yes |
| T/0057/89 | Sept. 10/90 | Duty of Fair Representation; Dismissed | Yes |

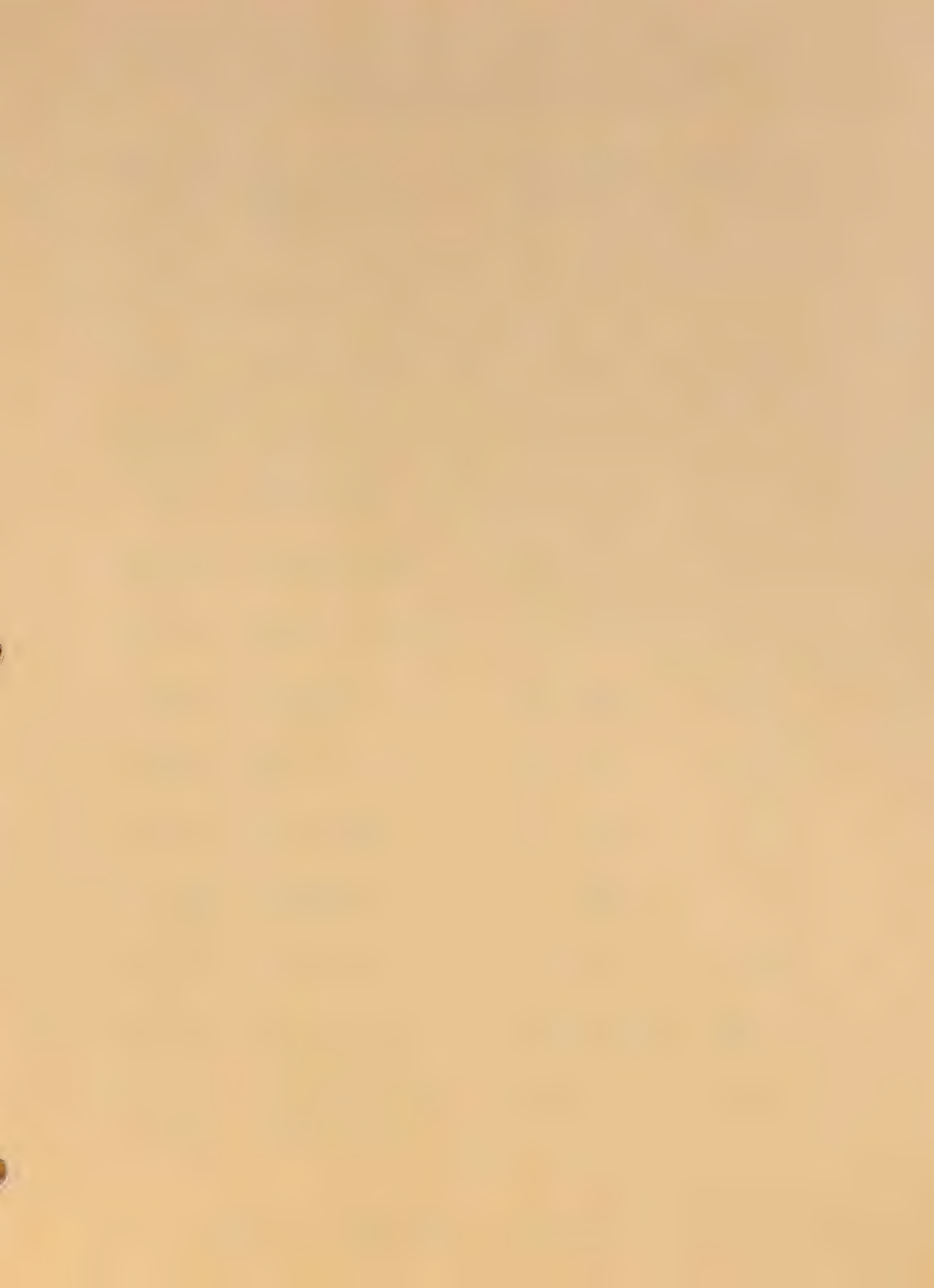
| File No. | Date | Type and Disposition | Indexed |
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| T/0060/89-1 T/0060/89-2 | July 9/90 Sept. 28/90 | Certification; Order Vote Ordered | No Yes |
| T/0063/89 | Nov. 1/91 | Unfair Labour Practice; Allowed | Yes |
| T/0067/89-1 | May 13/91 | Employee Status; Preliminary | Yes |
| T/0067/89-2 | Dec. 9/91 | Employee Status; Allowed | Yes |
| T/0008/90-1 T/0008/90-2 | July 30/90 Feb. 4/91 | Certification; Preliminary Certification; Consent Order | Yes No |
| T/0008/90-3 | Mar. 22/91 | Certification; Allowed | No |
| T/0015/90-1 | Feb. 7/91 | Duty of Fair Representation; Preliminary | Yes |
| T/0015/90-2 | June 17/91 | Duty of Fair Representation; Preliminary | Yes |
| T/0015/90-3 | Feb. 21/92 | Duty of Fair Representation; Preliminary | Yes |
| T/0026/90 | Dec. 7/90 | Successor Rights; Allowed | Yes |
| T/0034/90 | July 23/92 | Settlement | No |
| T/0035/90 | July 23/92 | Settlement | No |
| T/0040/90 | Mar. 18/91 | Unfair Labour Practice | Yes |
| T/0043/90 | Dec. 7/92 | Employee Status; Dismissed | Yes |
| T/0044/90 | Dec. 9/91 | Employee Status; Dismissed | Yes |

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| T/0063/90 | Apr. 7/92 | Certification/Employee Status; Dismissed | Yes |
| T/0064/90 | Sept. 23/91 | Certification; Allowed | No |
| T/0065/90 | Sept. 23/91 | Certification; Allowed | No |
| T/0066/90 | Sept. 23/91 | Certification; Allowed | No |
| T/0067/90 | Sept. 23/91 | Certification; Allowed | No |
| T/0074/90 | June 24/91 | Settlement | No |
| T/0011/91 | Aug. 2/91 | Settlement | No |
| T/0013/91 | Feb. 17/92 | Settlement | No |
| T/0014/91 | Mar. 3/92 | Unfair Labour Practice?; Dismissed | Yes |
| T/0017/91 | Oct. 22/92 | Unfair Labour Practice; Dismissed | Yes |
| T/0018/91 - see T/0011/91 | | | |
| T/0019/91 - see T/0013/91 | | | |
| T/0025/91 | Jan. 23/92 | Certification; Preliminary | Yes |
| T/0027/91 - see T/0013/91 | | | |
| T/0033/91-2 | Feb. 25/92 | Certification; Allowed | No |
| T/0036/91 | Jan. 28/92 | Religious Objection; Allowed | Yes |
| T/0038/91 | Dec. 17/91 | Settlement | No |
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| T/0045/91-1 | Apr. 8/91 | Certification/Employee Status; Preliminary | Yes |
| T/0045/91-2 | Aug. 17/93 | Certification; Allowed | No |
| T/0051/91 | Mar. 3/92 | Certification; Allowed | No |
| T/0052/91 | Feb. 25/92 | Certification; Allowed | No |
| T/0059/91-1 | Jan. 19/93 | Employee Status; Preliminary | Yes |
| T/0059/91-2 | Jan. 29/93 | Settlement | No |
| T/0064/91-1 | Apr. 3/92 | Certification; Interim | No |
| T/0064/91-2 | May 19/92 | Certification; Dismissed | No |
| T/0065/91 | May 19/92 | Certification; Dismissed | No |
| T/0068/91-1 | Aug. 17/92 | Certification; Preliminary | Yes |
| T/0068/91-2 | Feb. 17/93 | Certification; Allowed | No |
| T/0068/91-3 | June 10/93 | Certification; Allowed | No |
| T/0069/91-1 | Jan. 13/93 | Certification/ Employee Status; Allowed | Yes |
| T/0069/91-2 | Feb. 9/93 | Certification; Allowed | No |
| T/0071/91 | June 10/92 | Duty of Fair Representation; Dismissed | Yes |
| T/0074/91-1 | June 10/92 | Certification/ Employee Status; Preliminary | No |
| T/0074/91-2 | Mar. 31/93 | Certification; Allowed | No |
| T/0085/91 | May 5/93 | Duty of Fair Representation; Dismissed | Yes |
| T/0088/91 | Oct. 15/92 | Settlement | No |
| T/0093/91 | June 22/92 | Certification; Allowed | No |

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| T/0011/92 | Sept. 8/92 | Certification; Allowed | No |
| T/0012/92-1 | Oct. 6/92 | Certification; | No |
| T/0012/92-2 | July 7/93 | Preliminary Certification; Allowed | No |
| T/0016/92-1 | Feb. 9/93 | Certification; Preliminary | No |
| T/0016/92-2 | Feb. 17/93 | Certification; Preliminary | Yes |
| T/0021/92 | Jan. 19/93 | Settlement | No |
| T/0069/92 | Apr. 13/93 | Certification; Allowed | No |
| T/0072/92 | July 14/93 | Unfair Labour Practice; Interim | Yes |
| T/0073/92 | Apr. 8/93 | Certification; Preliminary | No |
| T/0074/92-1 | Mar. 26/93 | Certification; Preliminary | No |
| T/0074/92-2 | May 13/93 | Certification; Allowed | No |
| T/0074/92-3 | Sept. 29/93 | Certification; Bargaining Unit Description | Yes |
| T/0075/92 | May 6/93 | Certification; Allowed | No |
| T/0076/92 | July 6/93 | Unfair Labour Practice; Preliminary | Yes |
| T/0094/92 | Sept. 29/93 | Unfair Labour Practice; Preliminary | Yes |
| T/0005/93-1 | May 12/93 | Certification; Preliminary | No |
| T/0005/93-2 | July 7/93 | Certification; Allowed | No |
| T/0025/93 | June 10/93 | Employee Status; Preliminary | No |

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| T/0027/93 | Sept. 30/93 | Unfair Labour Practice/ Duty of Fair Representation; Dismissed | Yes |
| T/0033/93 | Sept. 29/93 | Settlement | No |



ONTARIO PUBLIC SERVICE LABOUR RELATIONS TRIBUNAL

TABLE OF INTEREST ARBITRATION DECISIONS 1980 - October 5, 1993

| File No. | Re: | Chairman | Date |
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| T/0014/80 | Maintenance Services | G.J. Brandt | Sept. 16/80 |
| T/0013/81 | Workmen's Compensation Board | K.P. Swan | Apr. 12/82 |
| T/0005/82 | Technical Services | K.P. Swan | June 28/82 |
| T/0015/82 | Correctional Services | A. Kruger | July 20/82 |
| T/0016/83 | Education Officer Classification | V.E. Scott | Feb. 28/86 |
| T/0017/84 | Correctional Services | D.H. Kates | Aug. 31/84 |
| T/0020/84 | Scientific and Professional Services | A.M. Kruger | Sept. 27/84 |
| T/0021/84 | Technical Services | T.G. Bastedo | Jan. 7/85 |
| T/0022/84 | Maintenance Services | E.E. Palmer | Dec. 25/84 |
| T/0023/84 | Institutional Care | H.D. Brown | Oct. 24/84 |
| T/0024/84-1 | Office Services | H.D. Brown | Dec. 19/84 |
| T/0024/84-2 | Office Services | H.D. Brown | |
| T/0026/84 | Clerical Services | E.E. Palmer | Dec. 13/84 |
| T/0027/84-1 | General Operations | L.-R. Betcherman | Dec. 11/84 |
| T/0027/84-2 | General Operations | L.-R. Betcherman | Nov. 6/85 |
| T/0029/84 | Administrative Services | E.E. Palmer | Dec./84 |

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| T/0040/84 | Workers' Compensation Board | H.D. Brown | Jul. 15/85 |
| T/0043/84-1 | Liquor Boards | A.M. Kruger | May 6/85 |
| T/0043/84-2 | Liquor Boards | A.M. Kruger | Aug. 6/85 |
| T/0043/84-3 | Liquor Boards | A.M. Kruger | Oct. 18/85 |
| T/0043/84-4 | Liquor Boards | A.M. Kruger | Jan. 17/86 |
| T/0048/84 | Toronto Area Transit Operating Authority | H.D. Brown | Oct. 24/85 |
| T/0060/84 | Technical Services | M. Teplitsky | Nov. 20/85 |
| T/0062/84 | Correctional Services | M. Teplitsky | Nov. 27/85 |
| T/0063/84 | General Operations | R.L. Kennedy | Oct. 10/85 |
| T/0067/84 | Institutional Care | J.H. Devlin | Nov. 22/85 |
| T/0068/84-1 | Maintenance Services | R.L. Kennedy | Oct. 10/85 |
| T/0068/84-2 | Maintenance Services | R.L. Kennedy | Nov. 25/85 |
| T/0069/84 | Office Services | M.G. Picher | Oct. 4/85 |
| T/0070/84 | Clerical Services | M.G. Picher | Oct. 4/85 |
| T/0072/84-1 | Scientific and Professional | M. Teplitsky | Aug. 22/85 |
| T/0072/84-2 | Scientific and Professional | M. Teplitsky | Dec. 16/85 |
| T/0073/84 | Administrative Services | M.G. Picher | Aug. 16/85 |
| T/0074/84 | Law Enforcement | V.E. Scott | Oct. 2/85 |
| T/0087/84 | Northern Affairs Officers | V.E. Scott | Nov. 12/85 |
| T/0001/86 | Correctional Services | P.J. Brunner | Apr. 27/87 |
| T/0002/86 | Liquour Boards | M.G. Picher | June 30/87 |



| <u>File No.</u> | <u>Re:</u> | <u>Chairman</u> | <u>Date</u> |
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| T/0006/86 | Technologists Medical Laboratory Series | D.H. Kates | Dec. 6/89 |
| T/0014/86 | Law Enforcement | J.H. Devlin | Mar. 30/87 |
| T/0036/86 | Technicians Photo-graphic Class Series | J.E. Emrich | May 2/89 |
| T/0018/87 | Law Enforcement | M.K. Saltman | May 11/88 |
| T/0039/87 | Psychometrist Class Series | M.K. Saltman | Apr. 11/89 |
| T/0039/87-2 | Psychometrist Class Series | M.K. Saltman | Mar. 2/90 |
| T/0050/87 | Probation Officer Class Series | M.K. Saltman | Mar. 13/89 |
| T/0059/87 | Environmental Officers (Management Board of Cabinet) | J. Ord | Sept. 5/90 |
| T/0063/87 | Maintenance Services Category | J.T. Clement | Dec. 19/88 |
| T/0104/87 | Institutional Care Category | M.K. Saltman | Dec. 28/88 |
| T/0002/88 | Human Rights Officer Class Series | R.J. Roberts | Nov. 29/88 |
| T/0021/88 | Law Enforcement Category | B.B. Fisher | Dec. 29/89 |
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| T/0046/88 | Workers' Compensation Advisers Class Series | D. Fraser | June 15/90 |



| File No. | Re: | Chairman | Date |
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| T/0048/88 | Institutional Care Category | D. Fraser | Jan. 19/90 |
| T/0039/89 | Metropolitan Toronto Convention Centre | M. Ingram | Apr. 27/90 |
| T/0019/90 | Air Engineers (Ministry of Natural Resources) | G. Charney | Mar. 5/92 |
| T/0030/90 | Roofing Specialists (Ministry of Housing) | D. Stanley | Nov. 29/91 |
| T/0046/90 | Workers' Compensation Adviser 1 and 2 (Ministry of Labour) | D. Fraser | Apr. 26/91 |
| T/0004/91 | Communications Operators (Ministries of Health, Natural Resources, Solicitor General and Transportation) | B. Keller | Feb. 15/92 |
| T/0009/91 | Utility Plant Instrument Technician (Ministry of the Environment) | M. Saltman | Jan. 4/93 |
| T/0020/91 | Contract Review Officer (Ministry of Transportation) | B. Keller | July 25/92 |
| T/0029/91 | Vehicle Inspection Administrator (Ministry of Transportation) | B. Keller | Sept. 16/92 |
| T/0030/91 | Vocational Rehabilitation Service Counsellors (Ministry of Community & Social Services) | K. Swan | July 6/92 |
| T/0034/91-1 | Employment Standards Auditors 1 (Ministry of Labour) | M. Watters | Oct. 15/92 |
| T/0034/91-2 | Employment Standards Auditors 1 (Ministry of Labour) | M. Watters | May 3/93 |
| T/0035/91 | Maintenance Operations Analyst (Ministry of Transportation) | H. Brown | Oct. 21/92 |

| File No. | Re: | Chairman | Date |
|-----------------|---|-----------------|-------------|
| T/0037/91 | Inspector of Signs and Building Permits 2 (Ministry of Transportation) | H. Brown | Jan. 28/93 |
| T/0040/91 | Gunsmith 1 & 2 (Ministry of the Solicitor General) | B. Keller | Jan. 27/93 |
| T/0041/91 | Geodetic Control Analyst (Ministry of Natural Resources) | S. Stewart | Nov. 18/92 |
| T/0047/91 | Real Estate Officers 1, 2 and 3 (Various Ministries) | B. Keller | Apr. 5/93 |
| T/0048/91 | Transportation Design Technician (Ministry of Transportation) | G. Charney | Apr. 28/93 |
| T/0061/91 | Case Worker, Homes for Special Care (Ministry of Health) | B. Keller | Aug. 20/93 |
| T/0073/91 | Farm Products Inspector 2 (Ministry of Agriculture & Food) | B. Keller | Aug. 24/93 |
| T/0075/91 | Mine Rescue Officer 1 & 2 (Ministry of Labour) | M. Saltman | Sept. 10/93 |
| T/0080/91 | Occupational Health and Safety Advisor (Ministry of Transportation) | M. Watters | Jan. 29/93 |
| T/0091/91 | Toronto Area Transit Operating Authority (GO Transit) | H. Brown | Dec. 31/92 |
| T/0092/91 | Utility Plant Electrician (Ministry of the Environment) | N. Dissanayake | May 18/93 |
| T/0007/92 | Pavement Design and Evaluation Officer (Ministry of Transportation) | H. Brown | Sept. 14/93 |



| File No. | Re: | Chairman | Date |
|-----------------|---|-----------------|-------------|
| T/0024/92 | Education Officer (Ministry of Education) | M. Teplitsky | Feb. 16/93 |
| T/0041/92 | Security Group (Metropolitan Toronto Housing Authority) | J. Brunner | Oct. 5/93 |

UNION: **Ontario Housing Employees'
Union, Local 767;
C.U.P.E., Intervener**

EMPLOYER: **Ontario Housing Corporation -
Windsor, Oshawa and
Hamilton Housing Authorities**

INDIVIDUAL COMPLAINANT: **--**

TYPE OF APPLICATION/COMPLAINT: **Certification**

DECISION DATE: **Oct. 11/73**

PANEL: **Judge W. Little
D.D. Carter
R.S. Mackay**

SUMMARY

BARGAINING UNIT - Certification - Appropriateness - General principles

BARGAINING UNIT - Certification - Appropriateness of local, municipal units vs. all-employee unit

CERTIFICATION - Bargaining unit - Appropriateness - General principles

CERTIFICATION - Bargaining unit - Appropriateness of all-employee unit vs. local, municipal units

CERTIFICATION - Bar on further applications - Principles - Section 41(1)(d)

SECTION 4 - Appropriateness of bargaining unit - Principles - Employee freedom of association

SECTION 41(1)(d) - Certification - Bar on further applications - Principles

Applicant union sought three bargaining units, one for each city's housing authority, composed of office staff, caretaking, maintenance, grounds, superintendents and painters. Respondent argued for an all-Ontario, all-employee unit excluding foremen, supervisors, persons above those ranks, and employees of the corporation in Metropolitan Toronto.

Held: local, municipal units were not appropriate; a modified all-employee unit was appropriate.

First issue was to determine appropriateness of proposed bargaining units. Tribunal's power was restricted by regulation designating applicant as representative for an all-employee unit in Metropolitan Toronto, excluding foremen, office staff, persons appointed under the Public Service Act, and temporary employees. However, Tribunal's discretion was otherwise unfettered, and should be based on wise industrial relations policy. While decisions of other labour relations board merited consideration, they should be treated with caution since they may not be appropriate for the public sector.

Generally, the relevant considerations for determining bargaining unit appropriateness are 1) freedom of association and community of interest; 2) cost of collective bargaining; and 3) the public interest.

The concept of employee freedom of association is contained in s. 4 of Act , which contains the concept of majority rule, but employee preference is not unlimited and it is not the only consideration. A bargaining unit based on a community of interest — common employee interests and goals — is most likely to be acceptable to the largest number of employees. Community of interest is determined by the following factors: 1) performance of similar work using similar skills; 2) substantially similar conditions of employment; 3) common direction and control by the employer; 4) geographical proximity of employees; 5) existing public sector patterns of collective bargaining.

Administrative cost of collective bargaining is relevant in the following ways. The structure of collective bargaining should interfere as little as possible with the employer's existing organization. Also, the greater the number of bargaining constituencies, the greater the cost. And bargaining units that are too small may not be economically viable.

Considering the public interest requires the Tribunal to consider how the collective bargaining structure will affect the functioning of government in Ontario. A structure providing for a strong, healthy bargaining

relationship where the parties come to the bargaining table on equal terms is most likely to serve the public interest.

In this case, there was considerable central budgetary control and all employees performed similar work using similar skills under similar conditions.

Geographical community of interest along municipal lines was not an overriding concern, since many administrative units of O.H.C. covered more than one municipality, and since existing patterns of public sector collective bargaining indicated a tendency to organize along provincial lines. Especially considering the central budgetary control and the similar working conditions throughout the province, municipal bargaining units would not be appropriate. Fact that O.L.R.B. had certified local bargaining units in some cases where property management functions were contracted out to private firms was not persuasive, since Tribunal's role was to consider factors relevant to the public sector.

Given central financial control by O.H.C., success of collective bargaining required O.H.C.'s presence at the bargaining table. Imposing local bargaining units might disrupt the existing organizational structure and reduce O.H.C.'s role in bargaining. Direct bargaining with a number of local units would cause fragmentation and unreasonable administrative costs, and would reduce the opportunities of some employees to participate in collective bargaining, as small units would not be economically viable.

Public interest in a strong, stable, equal bargaining relationship was best served where each party had the resources to carry out its function, which would not be feasible with local units.

For these reasons, the local units proposed by the applicant were not appropriate. A unit comprising all employees of O.H.C. and the housing authorities outside of Metropolitan Toronto, excluding those employed in a managerial or confidential capacity, would be appropriate.

Ten-month bar on new applications, requested by employer under s. 39(1)(e) [now s. 41(1)(d)], was refused. Purpose of section was to prevent continual vexatious applications. This was not the case here, and it was only fair to allow the applicant the immediate chance to apply for the unit found appropriate in this decision.

| | |
|--------------------------------|---|
| UNION: | C.U.P.E.; Certain persons, Interveners |
| EMPLOYER: | Workmen's Compensation Board |
| INDIVIDUAL COMPLAINANT: | -- |
| TYPE OF APPLICATION/COMPLAINT: | Certification |
| DECISION DATE: | Jun. 28/74 |
| PANEL: | Judge W. Little D.D. Carter -- |

SUMMARY

CERTIFICATION - Amendment of application - Considerations

CERTIFICATION - Bar on further applications - Considerations - Section 41(1)(d)

CERTIFICATION - Employee organization - National union seeking representation rights - Section 1(1)(g)

CERTIFICATION - Employee organization - Limit on political activities - Section 1(1)(g)

CERTIFICATION - Employee organization - Effect of time of formation - Section 1(1)(g)

CERTIFICATION - Procedure - Effect of delay - Tribunal's role

EMPLOYEE ORGANIZATION - National organization seeking representation rights - Effect of time of formation - Limit on political activity - Section 1(1)(g)

PROCEDURE - Certification - Effect of delay - Tribunal's role

PROCEDURE - Delay - Certification - Effect - Tribunal's role

SECTION 1(1)(g) - Employee organization - National organization seeking representation rights - Effect of time of formation - Limit on political activity

SECTION 41(1)(d) - Certification - Bar on further applications - Considerations

Union applied to represent certain employees of the employer's, but intervener employees questioned union's status as an "employee organization" under s. 1(1)(h) [now s. 1(1)(g)] of the Act.

Held: application dismissed, as applicant was not an employee organization within the Act.

Section 1(1)(h) [1(1)(g)] requires an employee organization to be "an organization of employees formed for the purpose of regulating relations between the employer and employees under this Act". Applicant union was a national organization of 180,000 employees, and its national character was stressed throughout its constitution.

Language in the Act intentionally limits the range of purposes for employee organizations, requiring their formal goals to relate solely to regulating relations between the provincial government and its employees. This did not require an employee organization to be completely parochial, nor was it impossible that it would be related to a parent body with wider concerns. However, it did require a separate organizational structure dedicated solely to regulating relations between employers and employees under the Act.

It was not necessary that the employee organization be formed after the Act came into force; the relevant question was not the time of formation but the purpose for which the organization was formed.

Given applicant's pronounced national aspirations, it was not an employee organization under the Act, as it had wider concerns that created the possibility of conflicting roles. Creation of a separate local after certification would not be sufficient, as the certificate would still be held by the national organization. Applicant should have chartered a local initially for the purpose of organizing the employees.

Subsections 1(1)(h)(i), (ii), (iii) and (iv) [now ss. 1(1)(g)(i), (ii), (iii) and (iv)], regarding political activities of employee organizations, were intended to insulate the public sector collective bargaining process from party politics, which could create a conflict of interest at the bargaining table. The subsections forbade any support of political parties, direct or indirect, monetary or non-monetary. However, they forbade only political activity at the provincial level.

While certification applications should be processed as quickly as possible, other persons affected by the application must be given the opportunity to be heard, even where it causes delays. Tribunal must act as quickly as possible, as consistent with the proper administration of the Act and the basic rules of natural justice.

Request to amend the application was refused, as the defect was so substantial that it could not be cured, because the membership evidence all related to the national organization, which did not qualify under the Act. A fresh application from a qualified employee organization was required. Circumstances did not warrant a bar on new applications under s. 39(1)(e) [now s. 41(1)(d)], as application had failed only because of a misinterpretation of the Act.

UNION: C.U.P.E., Local 1750; Nurses' Association and Association of Allied Health Professionals, Interveners

EMPLOYER: Workmen's Compensation Board

INDIVIDUAL COMPLAINANT: --

TYPE OF APPLICATION/COMPLAINT: Certification

DECISION DATE: Feb. 3/75

PANEL: Judge W. Little
D.D. Carter
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SUMMARY

BARGAINING UNIT - Certification - Appropriateness - General principles
- Evidence

BARGAINING UNIT - Certification - Appropriateness of professional
units vs. all-employee unit

CERTIFICATION - Bargaining unit - Appropriateness - General
principles - Evidence

CERTIFICATION - Bargaining unit - Appropriateness of all-employee unit
vs. professional units

PROCEDURE - Certification - Appropriateness of bargaining unit -
Evidence

SECTION 51(1) - Certification - Appropriateness of bargaining unit - Evidence - Membership evidence

Applicant C.U.P.E. sought representation rights for an all-employee bargaining unit of approximately 1,000 employees. Applicant Nurses' Association sought to represent nurses employed at the Workmen's Compensation Board Hospital and Rehabilitation Centre, a unit of about 23 employees, and Association of Allied Health Professionals sought to represent other health care professionals at the Hospital and Rehabilitation Centre, a unit of about 58 employees.

Issue was the appropriateness of the proposed bargaining units, either a single all-employee unit, three separate units created by carving out two units proposed by the interveners, or two separate units created by carving out from the all-employee unit a single unit comprised of nurses and health professionals.

Held: a single, all-employee unit was appropriate.

Membership evidence, which must be kept secret by virtue of s. 49(1) [now s. 51(1)], could not be used to establish the appropriateness of a proposed bargaining unit. However, a motion for non-suit was not appropriate, as the determination of a bargaining unit involves more than just the competing interests of the applicants because it also affects the employer and the overall structure of public sector collective bargaining. Opinion evidence on the issue of what bargaining units in the health field would be in the public interest was not admissible, as this was to be decided by the Tribunal.

While nurses and health professionals had unique duties and responsibilities because of their professional training and the fact they were subject to peer discipline, there were likely groups of employees in every bargaining unit who possess different skills and perform jobs quite different from one another. Performance of similar work using similar skills here was not the primary factor in determining a community of interest among employees.

Despite differences in wage rates, which would occur in any bargaining unit, all employees enjoyed similar benefits and working conditions, indicating a community of interest among all employees.

Employer exercised centralized control, and the proposed separate bargaining units did not conform to any organizational divisions within the employer. Central control and direction pointed to a wide community of interest. Furthermore, although proposed separate units were located at the Board's hospital in Metropolitan Toronto, there were many other

employees at this location who were not included in the proposed separate units. Geographic remoteness did not dictate separate units here.

Existing patterns of collective bargaining in Ontario indicated a wide community of interest, despite the fact that professionals in other provinces had tended to bargain separately.

Cost factor was not significant where only three units were proposed, but there was a possible fragmentation of the overall structure of bargaining in the public service, which was related to the public interest. The avoidance of multiple bargaining units was of paramount importance here, as it would create problems for the employer, employees and the public.

UNION: C.U.P.E. Local 1750

EMPLOYER: Workmen's Compensation Board

INDIVIDUAL COMPLAINANT: --

TYPE OF APPLICATION/COMPLAINT: Employee Status

DECISION DATE: Jun. 20/75

PANEL: Judge W. Little
D.D. Carter
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SUMMARY

EMPLOYEE STATUS - Claims officers, Workmen's Compensation Board - Whether adjudicate or determine claims - Section 1(1)(l)(v)

EMPLOYEE STATUS - Rehabilitation Counsellors, Workmen's Compensation Board - Whether managerial or confidential - Sections 1(1)(l)(v), (vi) and (viii)

EMPLOYEE STATUS - Managerial or confidential employees - Scope of Tribunal's residual discretion under s. 1(1)(l)(viii)

PROCEDURE - Employee status application - Evidence - Representative witnesses

SECTION 1(1)(l)(v) - Claims officers, Workmen's Compensation Board - Whether adjudicate or determine claims

SECTION 1(1)(l)(vi) - Rehabilitation Counsellors, Workmen's Compensation Board - Whether managerial or confidential

SECTION 1(1)(l)(viii) - Rehabilitation Counsellors, Workmen's Compensation Board - Whether managerial or confidential - Scope of Tribunal's residual discretion

Parties could not agree on exclusions from bargaining unit under s. 1(1)(m) of Act [now s. 1(1)(l)], particularly status of claims officers and rehabilitation counsellors.

Held: claims officers were excluded under the Act; rehabilitation counsellors were included in the bargaining unit.

While Tribunal has residual discretion under s. 1(1)(m)(viii) [now 1(1)(l)(viii)] to excluded persons employed in a managerial or confidential capacity, this discretion should only be applied where it is clearly evident that the job functions being performed are incompatible with the exercise of collective bargaining rights, and should not unnecessarily exclude persons from bargaining under the Act. Question is a matter of degree, and the differences between employees on either side of the line may be slight.

Evidence was based on three representative employees in each category, whose evidence must be viewed as a whole, without giving undue emphasis to particular job responsibilities of any one person.

Section 1(1)(m)(v) [1(1)(l)(v)] excludes persons who adjudicate or determine claims for compensation under any statute, but Tribunal did not consider that claims officers performed an adjudicative function. They performed initial processing of claims, but function was administrative, without use of judicial procedure or methods of proof. Whether claims officers "determined" claims depended on amount of independent discretion they possessed. Tribunal found they did exercise independent discretion by authorizing payment of claims after an initial investigation, and by interpreting and applying certain criteria and guidelines. While they often consulted with others, they still had responsibility for initially disposing of claims and therefore were decision-makers. Nor were they subject to close supervision once they had gained some experience. Existence of appeal procedure did not negate their independent discretion, as it was not a constant and continuing check on their decisions. Thus, claims officers were not employees within the Act.

While rehabilitation counsellors performed responsible, confidential job functions, responsibility and confidentiality in the abstract were not sufficient to exclude persons from collective bargaining under the Act, unless there were some obvious incompatibility between their duties and collective bargaining. Counsellors' primary job was to assist injured workers to return to useful employment, not to determine claims. Counsellors could recommend payment of certain benefits to injured

workers, but these related to rehabilitation and were not compensatory in nature, and counsellors had virtually no independent discretion to disperse the Board's funds, as they were subject to close controls. Nor were counsellors employed in a position confidential to persons determining claims for compensation under s. 1(1)(m)(vi) [1(1)(l)(vi)], as they merely reported on workers' progress in rehabilitation and this was a small part of their job, not a significant component as would be required to exclude them under the Act.

While counsellors have a responsible position and have access to confidential information about injured workers, this did not make their position incompatible with collective bargaining under s. 1(1)(m)(viii) [1(1)(l)(viii)]. Despite their wide discretion, they were not performing a managerial function or acting in a confidential capacity and there was no reason for Tribunal to invoke its discretion.

UNION: **Civil Service Association of Ontario, Inc.**

EMPLOYER: **Ontario Council of Regents for Colleges of Applied Arts and Technology**

INDIVIDUAL COMPLAINANT: **--**

TYPE OF APPLICATION/COMPLAINT: **Bargaining Authority**

DECISION DATE: **Mar. --/74**

PANEL: **Judge W. Little
D.D. Carter
R.S. Mackay**

SUMMARY

BARGAINING RIGHTS - Jurisdiction to decide whether proposals are within scope of collective bargaining and therefore arbitrable - Powers of Tribunal vs. powers of board of arbitration - Sections 10 and 39

JURISDICTION OF BOARD OF ARBITRATION - Bargaining authority - Jurisdiction to decide whether proposals are within scope of collective bargaining and therefore arbitrable - Powers of Tribunal vs. powers of board of arbitration - Sections 10 and 39

JURISDICTION OF TRIBUNAL - Bargaining authority - Jurisdiction to decide whether proposals are within scope of collective bargaining and therefore arbitrable - Powers of Tribunal vs. powers of board of arbitration - Sections 10 and 39

SECTION 10 - Bargaining authority - Jurisdiction to decide whether proposals are within scope of collective bargaining and therefore arbitrable
- Powers of Tribunal vs. powers of board of arbitration - Section 39

SECTION 39 - Bargaining authority - Jurisdiction to decide whether proposals are within scope of collective bargaining and therefore arbitrable
- Powers of Tribunal vs. powers of board of arbitration - Section 10

Employer claimed several proposals before interest arbitration board were not within the scope of collective bargaining under the Act. Issue was whether Tribunal or board had authority to determine the issue of arbitrability.

Held: board of interest arbitration had authority to determine whether proposals were properly the subject of arbitration.

Section 11(1) [now s. 10] confers this power on the board by necessary implication, thereby excepting it as a "matter" within the Tribunal's power under s. 37 [now s. 39], whereas no such power is specifically conferred on the Tribunal. Furthermore, as a policy matter, the parties should be free to bargain as much as possible themselves, without interference from outside bodies such as the Tribunal, and the arbitration process should be unfettered and free from intervention which would discourage the parties from bargaining themselves.

UNION: **Civil Service Association of
Ontario Inc.**

EMPLOYER: **Ministry of Transportation and
Communication**

INDIVIDUAL COMPLAINANT: **G.R. Anderson**

TYPE OF APPLICATION/COMPLAINT: **Religious Objection**

DECISION DATE: **Aug. 8/74**

PANEL: **Judge W. Little
D.D. Carter
R.S. Mackay**

SUMMARY

RELIGIOUS OBJECTION - General considerations - Section 16(2)

RELIGIOUS OBJECTION - United Church of Canada - Objection to union's strike policy - Exemption allowed

SECTION 16(2) - Religious objection to union dues - General considerations

Applicant sought exemption from union dues because he believed that strikes were morally wrong, and union was actively seeking an amendment to the Act to permit it the right to strike. Applicant had supported the union in the past but no longer felt able to support it because of its position on strikes. Applicant was a member of the United Church of Canada but claimed that his view of strikes was founded on his own conscience, which was in turn founded on his religious beliefs.

Held: exemption allowed.

Tribunal must objectively evaluate such applications, while taking into account individual religious views. Tribunal must scrutinize an applicant's sincerity, while an applicant has burden of proving that his objection is based upon sincerely held religious convictions or beliefs. In assessing sincerity, the Tribunal should consider 1) the witness's demeanour while testifying; 2) the relationship of the applicant's beliefs to a divine being and the moral dimensions of such beliefs; 3) the applicant's previous religious experience; 4) the relationship between the religious experience and the belief held by the applicant; 5) the directness of the connection between the religious belief and the objection to paying dues; 6) the extent to which the religious belief is applied.

In this case, the applicant has practiced his religion for many years and his church encourages individuals to make their own moral judgements. Applicant's objection to the union was consistent with his previous religious experience, and Tribunal was convinced his sincerely-held religious belief had led to the objection, not that it was merely a rationalization of his objection.

UNION: **Civil Service Association of Ontario Inc.**

EMPLOYER: **--**

INDIVIDUAL COMPLAINANT: **N.A. Sisco, Respondent**

TYPE OF APPLICATION/COMPLAINT: **Unfair Labour Practice (?)**

DECISION DATE: **Oct. 24/74**

PANEL: **Judge W. Little
D.D. Carter
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SUMMARY

PROCEDURE - General principles

PROCEDURE - Preliminary ruling on respondent's reply not proper

At commencement of hearing applicant requested that Tribunal rule on validity of respondent's defence as pleaded. Respondent alleged applicant was precluded from seeking relief due to its own violations of Act, and sought declaration of breach of Act.

Held: preliminary ruling refused.

Tribunal, as quasi-judicial body, should follow normal adversarial procedures similar to those followed by courts in civil matters. It would be premature to rule on validity of respondent's defence before hearing the evidence and all arguments relating to the application. Applicant had not established valid reasons for adopting such an extraordinary procedure.

UNION: **Civil Service Association of Ontario Inc.**

EMPLOYER: **Crown in Right of Ontario**

INDIVIDUAL COMPLAINANT: **M.J. Taggart**

TYPE OF APPLICATION/COMPLAINT: **Religious Objection**

DECISION DATE: **Oct. 27/75**

PANEL: **Judge W. Little
D.D. Carter
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SUMMARY

JURISDICTION OF TRIBUNAL - Religious exemption from union dues - Jurisdiction to order retroactive exemption

RELIGIOUS OBJECTION - Retroactive exemption - Tribunal's jurisdiction

SECTION 16(2) - Religious objection to union dues - Tribunal's jurisdiction to order retroactive exemption

Tribunal had adjourned application and other similar applications pending decision of Divisional Court in application of G.R. Anderson [T/0002A/74], on condition that, by consent of union, any exemption ordered would be retroactive.

After submissions on issue of Tribunal's jurisdiction to order retroactive exemption, held: exemption did not become effective until the Tribunal had satisfied itself that grounds for the exemption exist.

However, in view of the terms of the adjournment and agreement of the parties in this case, retroactive exemption was ordered.

UNION: O.P.S.E.U.

EMPLOYER: Ministry of Government Services

INDIVIDUAL COMPLAINANT: --

TYPE OF APPLICATION/COMPLAINT: Employee Status

DECISION DATE: Mar. 1/76

PANEL: Judge W. Little
D.D. Carter
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SUMMARY

EMPLOYEE STATUS - "Crown employees" - Employees of the Office of the Assembly (Legislature) - Effect of amendments to Legislative Assembly Act

After amendments to the Legislative Assembly Act, 18 employees who were employed by the Ministry and represented by the union became non-civil service employees of the Office of the Assembly. Ministry then ceased collecting union dues from employees and ceased to recognize union as being their bargaining agent. Union claimed this was improper, that the employees continued to be capable of representation by the union, and that Ministry violated Crown Employees Collective Bargaining Act by ceasing to collect union dues. Employer argued the employees were no longer Crown employees and therefore were outside the Act.

Held: employees were not employees under the Act.

Union argued that employees could not be divested of their existing rights in the absence of clear language. Employer argued that a "Crown employee" could only be someone working for the executive branch of

government, because of the presumption that the executive and legislative branches are to be separate and independent.

Language of the Legislative Assembly Act amendments showed a clear intention for the legislature to become a separate employer, as all the usual employer powers had been transferred to it from the executive branch. As legislature was a separate employer in fact, and not merely in form, employees were not Crown employees and were not covered by C.E.C.B. Act.

UNION: **Civil Service Association of
Ontario Inc.**

EMPLOYER: **Crown in Right of Ontario
(Sheridan College of Applied
Arts and Technology)**

INDIVIDUAL COMPLAINANT: **K.L. Luoranen**

TYPE OF APPLICATION/COMPLAINT: **Religious Objection**

DECISION DATE: **Jul. 5/76**

PANEL: **O.B. Shime
P. Riggan
R. Abella**

SUMMARY

RELIGIOUS OBJECTION - Seventh Day Adventist - Exemption allowed

SECTION 16(2) - Religious objection to union dues - Seventh Day Adventist - Exemption allowed

Applicant, a Seventh Day Adventist, objected to union on basis of writings of Ellen G. White, whom his church considers to be a divinely-inspired prophet. These writings forbade members from "binding up" with labour unions.

Union argued applicant's claim for exemption was based on the writings of an individual and that the Tribunal should be cautious of such claims, which could abuse the purpose of s. 15 [now s. 16] of Act.

Held: exemption allowed. Applicant was a religious man who based his objection on his religious belief. This satisfied requirements of s. 16.

UNION: O.P.S.E.U.

EMPLOYER: Crown in Right of Ontario

INDIVIDUAL COMPLAINANT: L. Van Harten

TYPE OF APPLICATION/COMPLAINT: Religious Objection

DECISION DATE: Jul. 5/76

PANEL: O.B. Shime
P. Riggan
R. Abella

SUMMARY

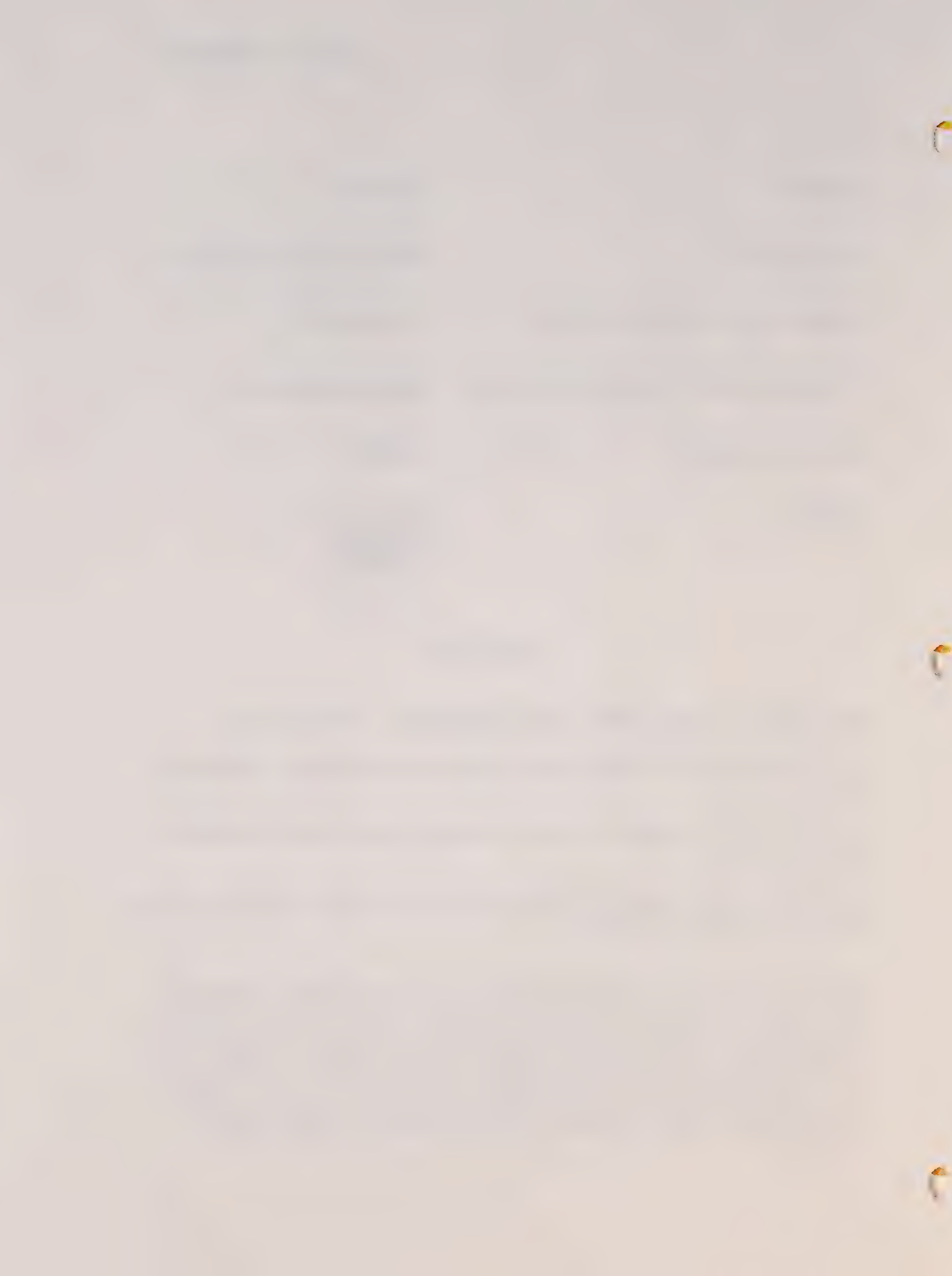
RELIGIOUS OBJECTION - General principles - Tribunal's role

RELIGIOUS OBJECTION - Free Christian Reform Church - Exemption allowed

SECTION 16(2) - Religious objection to union dues - General principles - Tribunal's role

SECTION 16(2) - Religious objection to union dues - Free Christian Reform Church - Exemption allowed

Applicant, a member of the Free Christian Reform Church, had joined union in 1969 under belief it was required for employment, but resigned membership in 1974. He sought exemption from payment of union dues under s. 15 [now s. 16(2)] on basis union was not founded on Bible and held meetings on Sundays. He also objected to union's attempt to gain right to strike, which he believed was contrary to oath he took as a government employee, and union's "militant position", which was against the scripture.



Held: application allowed.

Similar provision in Labour Relations Act, and decisions under that provision, were not binding but could be instructive.

Tribunal's function in such applications is not to weigh the competing interests between freedom of religion and freedom of association, but merely to determine whether an applicant comes within the meaning and intention of s. 16(2). Term "religious convictions or belief" cannot be generally defined and must be decided on the facts of each case. "Religious" need not mean the belief must be a tenet of a particular religious faith, and the belief must, in the main, be considered from a subjective point of view. However, the sincerity of an applicant's religious convictions should be examined to preclude abuse of s. 16(2).

An applicant must establish not only that he or she is religious, but that the objection to paying dues stems from the religious conviction or belief. There must be a nexus between the religious belief and the objection, not a mere objection due to social principles or political views. Tribunal should not question the logic of how an applicant arrives at the religious conviction or belief or its relation to the objection to paying dues. The concern is only whether the applicant holds such religious belief and personally relates that belief to the objection.

In this case, applicant is a religious man who based his life on his interpretation of the Bible. He holds sincere religious beliefs and his objection to paying dues is related to those beliefs. Therefore, he should be exempt from paying union dues.

UNION: O.P.S.E.U.

EMPLOYER: Crown in Right of Ontario

INDIVIDUAL COMPLAINANT: J. Raynor

TYPE OF APPLICATION/COMPLAINT: Religious Objection

DECISION DATE: Nov. 29/76

PANEL: O.B. Shime
P. Riggin
R. Abella

SUMMARY

RELIGIOUS OBJECTION - Designation of charity where parties cannot agree - Principles

Parties could not agree on designation of a charitable organization to receive amounts equal to union dues from which applicant had been exempted.

Held: Tribunal in such cases should designate a charitable organization located in the area where the applicant either lives or works. The Barrie and District United Appeal was designated.

UNION: O.P.S.E.U.

EMPLOYER: Crown in Right of Ontario

INDIVIDUAL COMPLAINANT: S. Geist

TYPE OF APPLICATION/COMPLAINT: Religious Objection

DECISION DATE: Jul. 5/76

PANEL: O.B. Shime
P. Riggin
R. Abella

SUMMARY

RELIGIOUS OBJECTION - Seventh Day Adventist - Exemption allowed

SECTION 16(2) - Religious objection to union dues- Seventh Day Adventist - Exemption allowed

Applicant was a member of the Seventh Day Adventist church who attended regularly and paid a tithe to the church. He had been opposed to unions all his life and had refused jobs in the past when union membership was required. His opposition to unions was based on his interpretation of the Bible and his belief that the Bible commanded him not to strike or to be forceful in seeking goods or higher wages. He also objected to taking the union oath.

Held: application allowed. There was a clear connection between applicant's religious views and his objection to paying union dues.

UNION: O.P.S.E.U.

EMPLOYER: Crown in Right of Ontario

INDIVIDUAL COMPLAINANT: Sister E. Sexton, C.S.J.

TYPE OF APPLICATION/COMPLAINT: Religious Objection

DECISION DATE: Jul 8/76

PANEL: O.B. Shime
P. Riggin
R. Abella

SUMMARY

RELIGIOUS OBJECTION - Roman Catholic sister - Whether sufficient nexus between religious beliefs and objection - Exemption allowed

SECTION 16(2) - Religious objection to union dues - Roman Catholic sister - Whether sufficient nexus between religious beliefs and objection - Exemption allowed

Applicant was a member of the Sisters of St. Joseph who objected to the union's strike position because it conflicted with her vow of poverty and because she felt her service to other people in her job with the Ministry of Community and Social Services was a higher moral obligation. Applicant admitted her objection was based on her conscience but claimed that her conscience stemmed from her religious convictions and belief.

Held: application allowed.

Applicant was clearly a religious person who viewed religion as guiding her whole life, including her work. She viewed her work as a service and had taken a vow of poverty. Her objection to paying union dues on the basis of her conscience thus was bound up with her religious convictions in her view, and was not merely a matter of social or philosophical disagreement.

UNION: **O.P.S.E.U.**

EMPLOYER: **Crown in Right of Ontario**

INDIVIDUAL COMPLAINANT: **J.B. Kruisselbrink**

TYPE OF APPLICATION/COMPLAINT: **Religious Objection**

DECISION DATE: **Jul. 8/76**

PANEL: **O.B. Shime
P. Riggin
R. Abella**

SUMMARY

PROCEDURE - Religious objection to union dues - Procedure where applicant unrepresented - Tribunal's role

RELIGIOUS OBJECTION - Guelph Reform Church - Whether sufficient nexus between objection and beliefs - Exemption allowed

RELIGIOUS OBJECTION - Procedure where applicant unrepresented - Tribunal's role

SECTION 16(2) - Religious objection to union dues - Procedure where applicant unrepresented - Tribunal's role

SECTION 16(2) - Religious objection to union dues - Guelph Reform Church - Whether sufficient nexus between objection and beliefs - Exemption allowed

Applicant, a member of the Guelph Reform Church, had been a member of the union but now objected to paying union dues because of the union's position in advocating an illegal strike. Applicant believed that all rules should be obeyed because they were given by God.

Union argued that the objection was based on secular concerns and, in any event, an illegal strike did not occur.

Held: exemption allowed.

Applicant had met initial requirement of showing he had religious convictions, but question was whether there was a belief between his beliefs and his objection.

Where laymen appear unrepresented by counsel, without experience as advocates, Tribunal should be prepared to draw reasonable inferences from the evidence, although not going so far as to make a case for an unskilled party or fill in the gaps in the case.

In this case, applicant perceived the union as advocating an illegal strike. His view that all rules emanate from God should be taken to include laws and legislation. Union's position was therefore contrary to his religious views because, in his view, it was acting contrary to God's will. Given the sincerity of his beliefs, his objection was sufficiently related to his religious convictions or belief.

UNION: **O.P.S.E.U.**

EMPLOYER: **Crown in Right of Ontario**

INDIVIDUAL COMPLAINANT: **J.L. Jamer**

TYPE OF APPLICATION/COMPLAINT: **Religious Objection**

DECISION DATE: **Jul. 5/76**

PANEL: **O.B. Shime
P. Riggin
R. Abella**

SUMMARY

RELIGIOUS OBJECTION - Seventh Day Adventist - Exemption allowed

RELIGIOUS OBJECTION - Sincerity of views - Effect of withdrawing earlier application

SECTION 16(2) - Religious objection to union dues - Seventh Day Adventist - Exemption allowed

SECTION 16(2) - Religious objection to union dues - Sincerity of views - Effect of withdrawing earlier application

Applicant was a Seventh Day Adventist. Although she had originally belonged to union, her views had been evolving based on her study of the Bible, and she believed union's aggressive stance was contrary to the Bible's command that she "live peacefully with all men". She also believed the Lord had told her "not to be bound up with a confederacy or a union". She also objected to the union's oath, which she believed was contrary to the oath taken to the employer.

Applicant had filed an earlier application which was withdrawn so that she could study her views and be more certain in her beliefs.

Union argued applicant's objection was based on supposition as to the union's role, and that she was not consistent in her beliefs due to having filed two applications.

Held: exemption allowed.

Applicant was a religious person and her objection was based on her particular religious views. Her first application was withdrawn out of sincere concern on her part that she needed more facts about the union's position to support her application, and she had no improper motive for withdrawing that application.

While some of her views of union were subjective, she honestly and sincerely held those views and her objections were thus within the requirements of s. 15 [now s. 16(2)].

UNION: O.P.S.E.U.

EMPLOYER: Crown in Right of Ontario

INDIVIDUAL COMPLAINANT: V.R. Koop

TYPE OF APPLICATION/COMPLAINT: Religious Objection

DECISION DATE: Jul. 8/76

PANEL: O.B. Shime
P. Riggin
R. Abella

SUMMARY

RELIGIOUS OBJECTION - Mennonite affiliation - Whether sufficient nexus between objection and religious belief - Exemption allowed

SECTION 16(2) - Religious objection to union dues - Mennonite affiliation - Whether sufficient nexus between objection and religious belief - Exemption allowed

Applicant had a background in and affiliation with the Mennonites. He claimed the union's militant position conflicted with his personal moral belief, which was "an outgrowth of and inseparable from his faith".

Union argued applicant's objection was based on a moral position, not a religious objection.

Held: exemption allowed.

Applicant was religious and his personal positions were inextricable from his religious background and belief. His objection to paying dues flowed from and was related to his religious convictions.

UNION: **O.P.S.E.U.**

EMPLOYER: **Crown in Right of Ontario**

INDIVIDUAL COMPLAINANT: **J. Farmer**

TYPE OF APPLICATION/COMPLAINT: **Religious Objection**

DECISION DATE: **Oct. 28/76**

PANEL: **O.B. Shime
J.H. McGivney
R. Abella**

SUMMARY

RELIGIOUS OBJECTION - Atheist - Exemption for "beliefs" restricted to religious beliefs - Section 16(2)

SECTION 16(2) - Religious objection to union dues - Atheist - Exemption for "beliefs" restricted to religious beliefs - Section 16(2)

Applicant, an atheist, felt that unions did not work in the country's best interests and based his claim on his strong ethical principles, which he said he held as strongly as a religious person. Union argued his claim was based solely on political or social views.

Held: application dismissed.

Tribunal's function is not to evaluate the merits of a person's convictions but merely to determine whether a claim for exemption is based on a "religious conviction or belief". Applicant's objection was not based on a religious conviction, as "religious" does not encompass atheism. Word "religious" in s. 15 [now s. 16(2)] should also be taken to modify word "belief", so that section does not allow exemptions on basis of personal beliefs that are non-religious. To hold otherwise would allow employees to circumvent the general procedure for termination of bargaining rights under s. 22 [now s. 24].

| | |
|--------------------------------|---|
| UNION: | O.P.S.E.U. |
| EMPLOYER: | Crown in Right of Ontario |
| INDIVIDUAL COMPLAINANT: | K.G. Appleton |
| TYPE OF APPLICATION/COMPLAINT: | Religious Objection |
| DECISION DATE: | Nov. 29/76 |
| PANEL: | O.B. Shime P. Riffin R. Abella |

SUMMARY

RELIGIOUS OBJECTION - Designation of charity where parties cannot agree

Parties could not agree on designation of charitable organization to receive amounts equivalent to union dues, from which applicant had been exempted on religious grounds.

Held: Tribunal should designate a charitable organization located in the area where the applicant wither resides or works. The United Community Fund of Greater Toronto was designated.

UNION: O.P.S.E.U.

EMPLOYER: Crown in Right of Ontario

INDIVIDUAL COMPLAINANT: I. Welton

TYPE OF APPLICATION/COMPLAINT: Employee Status

DECISION DATE: Apr. 6/77

PANEL: O.B. Shime
P. Riggan
R. Abella

SUMMARY

EMPLOYEE STATUS - Duties and responsibilities - Basis for Tribunal's assessment - Time of assessment

EMPLOYEE STATUS - Research Specialist, Working Conditions - Whether formulating organization policy - Section 1(1)(i)(ii)

EMPLOYEE STATUS - Managerial or confidential exclusions - General principles - Section 1(1)(i)

PROCEDURE - Relevance of other jurisprudence

SECTION 1(1)(i) - Managerial or confidential exclusions - General principles

SECTION 1(1)(i)(ii) - "Formulation of organization objectives and policy"

SECTION 1(1)(i)(ii) - Research Specialist, Working Conditions - Whether formulating organization policy

Issue was employee status of an Economist 4 in the research branch of the Ministry of Labour, who held the position of "Research Specialist - Working Conditions". Employer argued he should be excluded under s. 1(1)(m)(ii) [now 1(1)(l)(ii)] because he reviewed specific policies and sections of legislation for problems, suggested alternatives and assessed their impact. Union argued he did not initiate policy or exercise decision-making power so he should not be excluded.

Held: employee was an employee under the Act.

Tribunal should be primarily concerned with actual responsibilities and duties performed, not with written position specifications or organization charts. Duties and responsibilities as of date application was made should be looked at, not those as of the date of hearing, unless evolving organizational changes have occurred which were underway at the application date.

While decisions of other tribunals cannot determine matters under the Crown Employees Collective Bargaining Act, they can be of assistance where the other legislation is similar.

Section 1(1)(m)(ii) [1(1)(l)(ii)] is not limited to involvement in planning government policy affecting the government's relationship with its employees. Act contains a reasonably complete code to determine those persons who are managerial or confidential. Furthermore, the structure of government differs from the structure of businesses in the private sector and care must be taken in trying to apply private-sector concepts on the public sector.

Section 1(1)(m) [1(1)(l)] contains a hierarchy of persons considered to be managerial or confidential. Section 1(1)(m)(ii) [1(1)(l)(ii)] covers a range of persons who are part of the managerial team, even though they do not have direct supervisor duties or act as heads of government operations. These people will usually but not always be senior government personnel who do not share a community of interest with members of the bargaining unit.

Most positions in the government are involved with developing or administering one government program or another. The key phrase in s. 1(1)(m)(ii) [1(1)(l)(ii)] is that the person's involvement must be "in the formulation of organization objectives and policy". But mere involvement in these areas does not bring a person within the section; the person must be involved in formulating the objectives and policies of the organization, ie. the decision makers, not those who merely supply information or collate material or make suggestions.

On the facts of this case, the employee played an investigative and supportive role. He was not involved in "formulating" organization policy,

he merely reported to others who had the responsibility of deciding how to use the information he provided. He was a mere conduit for information and had no decision-making responsibility. He was essentially a gatherer of facts and figures rather than a formulator of policy, and therefore was an employee within the Act.

UNION: O.P.S.E.U.

EMPLOYER: Crown in Right of Ontario

INDIVIDUAL COMPLAINANT: G. Bertolo

TYPE OF APPLICATION/COMPLAINT: Employee Status

DECISION DATE: Apr. 18/77

PANEL: O.B. Shime
P. Riggin
R. Abella

SUMMARY

EMPLOYEE STATUS - Office Manager of jail - Whether supervisory or confidential - Whether responsible for grievance procedure - Sections 1(1)(l)(iii), (iv) and (vii)

SECTION 1(1)(l)(iii) - Office Manager of small jail office - Whether exercising significant supervisory function - Sections 1(1)(l)(iv) and (vii)

SECTION 1(1)(l)(iv) - Office Manager of small jail office - Whether responsible for grievance procedure where never actually responding to a grievance - Sections 1(1)(l)(iii) and (vii)

SECTION 1(1)(l)(vii) - Office Manager of small jail office - Whether confidential because of access to personnel files - Sections 1(1)(l)(iii) and (iv)

Issue was employee status of Office Manager of Sault Ste. Marie Jail, classified as Bursar 2 employed by the Ministry of Correctional Services. His duties to record comings and goings of inmates, handle some minor financial matters, and perform general office duties. Employer argued he was managerial because he supervised two other clerks, was responsible for handling first step in the grievance procedure, and acted in a confidential capacity to the superintendent.

Held: employee was an employee within the meaning of the Act.

Office was a very small operation where work was performed on a highly controlled basis. Most policies and procedures were predetermined for all jails of a similar size and employee had no meaningful input into operational procedures or regulations. Superintendent had approval power over all office matters and employee did not exercise a meaningful managerial role.

Employee had never been required to deal formally with complaints or grievances so as to require his exclusion under s. 1(1)(m)(iv) [now s. 1(1)(l)(iv)], and the inference was that any such problems would be handled by the superintendent, given the direct contact between the two clerks and the superintendent. There was no clear responsibility on the employee to deal with grievances if they should arise.

Given the particular job and the small number of people below him, the employee did not spend a significant portion of his time supervising the other two employees so as to fall within s. 1(1)(m)(iii) [1(1)(l)(iii)]. Given the predetermined procedures, there was very little opportunity for the clerks to stray in their work, and thus little need for supervision both in terms of quantity and quality. Furthermore, overseeing implementation of decisions made by others or relaying instructions without having independent discretion did not constitute supervision.

Fact that employee, along with other employees in office, had access to confidential personnel files did not render him a confidential employee within s. 1(1)(m)(vii) [1(1)(l)(vii)], as nothing he did would place employer in jeopardy with respect to confidential matters relating to employee relations.

Given the small office and the closely regulated procedures, it was unlikely that the employer required both a manager and a supervisor for the two clerks. Based on the duties he actually performed, not on those he hypothetically could be called on to perform, he was an employee within the meaning of the Act.

UNION: O.P.S.E.U.

EMPLOYER: Ministry of Colleges and Universities

INDIVIDUAL COMPLAINANT: S. Gordner

TYPE OF APPLICATION/COMPLAINT: Employee Status

DECISION DATE: Nov. 24/76

PANEL: O.B. Shime
P. Riggin
R. Abella

SUMMARY

EMPLOYEE STATUS - G.O. Temporary employee - Assignment lasting over two years - Principles affecting temporary employee exclusion - Section 1(1)(f)

EMPLOYEE STATUS - Temporary employee - Assignment lasting over two years - Principles affecting temporary employee exclusion - Section 1(1)(f)

SECTION 1(1)(f)(vii) - Temporary employee - Assignment lasting over two years - Principles affecting temporary employee exclusion

Employee, a Clerk Typist 2 assigned to the Ministry for over two years, was hired and paid as a temporary employee in the Temporary Help program of G.O. Temporary of the Civil Service Commission. Issue was whether she was an employee under the Act or was excluded under s. 1(1)(g) [now 1(1)(f)], as alleged by the employer.

Held: application dismissed; employee was excluded under the Act.

Length of time of a work assignment did not indicate, by itself, whether the work situation was permanent or temporary. On the other hand, employer could not arrange an assignment through the Civil Service Commission and deem it temporary in order to avoid the provisions of the Act.

Here, union had not shown employee's work assignment was permanent, as she was not filling a regular position and had been told when hired that there was not a sufficient complement for another full time person.

However, in future Tribunal felt employers should explain the situation and the employer's intentions to a temporary employee once the assignment had continued for 12 months. The mere fact that the assignment was through G.O. Temporary would not be sufficient to prove the employee was excluded under the Act. A work assignment in excess of 12 months plus a failure to explain the circumstances to the employee could constitute prima facie evidence that the position was not temporary.

1. The first part of the document discusses the importance of maintaining accurate records of all transactions and the role of the accounting department in ensuring the integrity of the financial statements.

2. The second part of the document outlines the various methods used to collect and analyze data, including the use of statistical software and the importance of sample size and representativeness.

3. The third part of the document describes the various types of data that can be collected, including primary and secondary data, and the importance of ensuring the accuracy and reliability of the data.

4. The fourth part of the document discusses the various methods used to analyze data, including descriptive statistics, inferential statistics, and regression analysis.

5. The fifth part of the document describes the various types of data that can be collected, including primary and secondary data, and the importance of ensuring the accuracy and reliability of the data.

6. The sixth part of the document discusses the various methods used to analyze data, including descriptive statistics, inferential statistics, and regression analysis.

7. The seventh part of the document describes the various types of data that can be collected, including primary and secondary data, and the importance of ensuring the accuracy and reliability of the data.

8. The eighth part of the document discusses the various methods used to analyze data, including descriptive statistics, inferential statistics, and regression analysis.

9. The ninth part of the document describes the various types of data that can be collected, including primary and secondary data, and the importance of ensuring the accuracy and reliability of the data.

10. The tenth part of the document discusses the various methods used to analyze data, including descriptive statistics, inferential statistics, and regression analysis.

UNION: O.P.S.E.U.

EMPLOYER: Crown in Right of Ontario
(Ministry of Consumer and
Commercial Relations)

INDIVIDUAL COMPLAINANT: G. McWilliams

TYPE OF APPLICATION/COMPLAINT: Employee Status

DECISION DATE: Apr. 6/77

PANEL: O.B. Shime
P. Riggin
R. Abella

SUMMARY

EMPLOYEE STATUS - Regional Manager, Pressure Vessels Branch - Field staff supervisor - Whether exercising independent discretion and authority - Section 1(1)(l)(iii)

SECTION 1(1)(l)(iii) - Regional Manager, Pressure Vessels Branch - Field staff supervisor - Whether exercising independent discretion and authority

Issue was employee status of Regional Manager, Pressure Vessels Branch of the Ministry of Consumer and Commercial Relations. Branch administered Boilers and Pressure Vessels Act and performed safety inspections, investigated accidents and assured compliance with Act. Regional Manager had eight safety officers in several locations reporting to him.

Held: Regional Manager was employed in a managerial capacity and was not an employee within the meaning of the Crown Employees Collective Bargaining Act.

Regional Manager made recommendations about the number of staff required, selected and recruited staff and determined duties and assignments for staff. He trained, evaluated, recommended merit increases and granted time off and vacations. He also recommended transfers and dismissals and was the first step in the grievance procedure. He spent 100% of his time supervising.

He did not perform his duties under the watchful eye of more senior management personnel, as alleged by union, but in fact had authority and complete control of the operation in his region. He exercised independent decision-making initiative with respect to employees and the nature of the work and could make decisions deviating from the usual criteria set forth for the Branch. His discretion was flexible and was not unduly limited by central policies or regulations, as alleged by union.

In this case, Regional Manager was chief person in the field with control of the field staff, and no other senior management person made independent decisions about the field staff. Despite the small number of staff supervised, he was clearly the on-site supervisor and he was a managerial employee within s. 1(1)(m)(iii) [now s. 1(1)(l)(iii)] of the Act.

UNION: O.P.S.E.U.

EMPLOYER: Crown in Right of Ontario
(Ministry of Transportation
and Communications)

INDIVIDUAL COMPLAINANT: G. Dean

TYPE OF APPLICATION/COMPLAINT: Employee Status

DECISION DATE: Apr. 18/77

PANEL: O.B. Shime
P. Riggin
R. Abella

SUMMARY

EMPLOYEE STATUS - Senior Municipal Supervisor, Ministry of Transportation and Communications - Whether supervisory - Whether involved in formulating budgets - Whether adjudicating claims - Sections 1(1)(l)(ii), (iii) and (v)

SECTION 1(1)(l)(ii) - Senior Municipal Supervisor, Ministry of Transportation and Communications - Whether involved in formulating budgets - Principles - Sections 1(1)(l)(iii) and (v)

SECTION 1(1)(l)(iii) - Senior Municipal Supervisor, Ministry of Transportation and Communications - Whether spending significant portion of time supervising where spending 15-20% of time on yearly basis - Sections 1(1)(l)(ii) and (v)

SECTION 1(1)(l)(v) - Senior Municipal Supervisor, Ministry of Transportation and Communications - Whether adjudicating claims by municipalities for road funds - Sections 1(1)(l)(ii) and (iii)

Issue was employee status of Senior Municipal Supervisor in the Thunder Bay District Office of the Ministry of Transportation and Communications. He assessed need for road subsidies in southern and western parts of district and administered allocation of funds granted by Head Office.

Employer argued he was a managerial employee under s. 1(1)(m)(ii), (iii) or (v) of Act [now s. 1(1)(l)(ii), (iii) or (v)], because he helped prepared budgets, adjudicated claims for compensation submitted by local municipalities and had effective control over the employment relationship of many employees. Union argued he had limited supervisory authority and was not involved in the decision-making process.

Held: employee was a managerial employee within s. 1(1)(m)(iii) [1(1)(l)(iii)].

Section 1(1)(m)(ii) [1(1)(l)(ii)] is concerned with members of the managerial team who are not significantly involved in supervision but who do not share a community of interest with other bargaining unit members. It concerns those involved with budgets in a substantive way. Those who make assessments or projections or merely supply data or collate information are not "involved...in the formulation of budgets" within meaning of the Act; only those who receive the information and reduce it into an express budget are managerial, as they are the ones who make the decisions. Those involved with formulating the government's budget in the office of the Treasurer of Ontario, and those who are concerned with meeting payroll or collective bargaining commitments would be potential management or confidential employees who should be excluded from the bargaining unit.

Here, the Senior Municipal Supervisor was merely involved in collating and assessing data, based on known procedures and costs. His decision-making latitude was narrow and subject to the approval of his seniors. His functions did not involve him in the "formulation of budgets" within the meaning of s. 1(1)(m)(ii) [1(1)(l)(ii)]. Nor did the fact that he provided information and assistance to the public make his function managerial.

Supervising work performed by employees of local municipalities would not make the Senior Municipal Supervisor managerial, as s. 1(1)(m)(iii) [1(1)(l)(iii)] refers only to supervision of employees of the Government of Ontario. However, the extent of his supervision, control and independent decision making over government employees, together with his total responsibilities, did put him within the meaning of s. 1(1)(m)(iii) [1(1)(l)(iii)]. Two general foremen reported to Senior Municipal Supervisor, and he had authority to hire or dispense with services of equipment operators. He also made recommendations on complement and hiring of other staff, especially seasonal workers. He assigned work to general foremen and prepared appraisals, and was responsible for lay-offs, time off, scheduling vacations and approving overtime. In all, he spent 15-20% of his time supervising, although he spent a greater amount of time supervising

during certain seasons of the year. Question of whether a "significant" portion of time was spent in supervision must be determined within the total context of the employee's job.

Senior Municipal Supervisor was not within s. 1(1)(m)(v) [1(1)(l)(v)] as his role in determining claims was not that of an adjudicator but was merely to assist, review and monitor the expenditure of funds. He was not the final determinant of the funds to be received.

UNION: O.P.S.E.U.

EMPLOYER: Crown in Right of Ontario

INDIVIDUAL COMPLAINANT: V.J. Hart

TYPE OF APPLICATION/COMPLAINT: Religious Objection

DECISION DATE: Feb. 9/77

PANEL: O.B. Shime
P. Riggin
R. Abella

SUMMARY

RELIGIOUS OBJECTION - Designation of charity where parties cannot agree

Parties were unable to agree on charitable organization to receive contributions equivalent to employee's union dues.

Held: Tribunal should designate a charitable organization located in the area where the employee either resides or works. The United Community Fund of Greater Toronto was designated.

UNION: **O.P.S.E.U.**

EMPLOYER: **Crown in Right of Ontario**

INDIVIDUAL COMPLAINANT: **L.R. Bethell**

TYPE OF APPLICATION/COMPLAINT: **Employee Status**

DECISION DATE: **Apr. 6/77**

PANEL: **O.B. Shime
P. Riggin
R. Abella**

SUMMARY

EMPLOYEE STATUS - Correctional Officer 4 - Whether exercising significant supervisory authority - Whether involved in dealing with grievance procedure - Sections 1(1)(l)(iii) and (iv)

SECTION 1(1)(l)(iii) - Correctional Officer 4 - Whether exercising significant supervisory authority - Section 1(1)(l)(iv)

SECTION 1(1)(l)(iv) - Correctional Officer 4 - Whether involved in dealing with grievance procedure - Section 1(1)(l)(iii)

Employee was a Correctional Officer 4 who worked at the Ottawa-Carleton Detention Centre. He exercised some supervisory duties but issue was whether these were significant enough to require his exclusion from the bargaining unit.

C.O. 4 had supervisory responsibility over four other employees and after 5:00 p.m. was the senior person on site, with instructions to call the on-call officer in case of an emergency or other incidents. He had sometimes exercised his own discretion in handling incidents. He had some input into hiring and appraisal of probationary employees but no final say in these matters. He could approve overtime or call in /2

additional staff, and he was the first step in the grievance procedure although he had never yet actually had to deal with a grievance.

Union claimed he had limited authority over a small number of people and performed the same work as other bargaining unit members. Even after 5:00, there was a superior officer on call and immediately available. Employer claimed he was the first level of management.

Held: C.O. 4 was employed in a managerial capacity within s. 1(1)(m)(iii) [1(1)(l)(iii)].

Size and complexity of Ontario's government meant it was rare for a single person to exercise the full range of management duties. It also meant that many policies and practices were centralized and tightly regulated. These developments have largely stripped first line management of its traditional roles.

Under s. 1(1)(m) [now 1(1)(l)], thrust of section is that the person must have an independent decision making function before being employed in a managerial capacity. Similar considerations should apply to s. 1(1)(m)(iii) [1(1)(l)(iii)]. Intent of this subsection is to exclude those who are responsible for seeing that the work gets done and the collective agreement is adhered to. The term "supervision" carries with it the managerial concepts of responsibility, effective control and independent decision making relating to other employees. The title "Supervisor" will not necessarily make someone a member of management; rather, the Tribunal must fully examine the person's duties and responsibilities, as well as the particular job and its context. There is no fixed percentage of time spent in supervision that can be considered "significant" in all cases.

Furthermore, Tribunal should attempt to treat all persons with similar position titles in a Ministry as having substantially uniform duties and responsibilities unless significant differences are shown in the evidence, so that persons with identical positions will be uniformly included or excluded from the bargaining unit.

In this case, the type of work involved required predetermined policies and regulations, with little room for laxity or individual choice in the C.O. 4's actions. Almost all of C.O. 4's actions were subject to review by a superior officer. Although he was first step in grievance procedure, he had never dealt with a grievance and would probably take the matter to a superior if required to do so. In the absence of actual experience and considering the evidence, there was no basis for excluding him under s. 1(1)(m)(iv) [1(1)(l)(iv)].

C.O. 4's appraisal and discipline duties were subject to confirmation by senior personnel, and his responsibilities for assigning staff or calling in additional help were also circumscribed. The nature of the work was

largely predetermined, with little scope for individual initiative or independent decision making. The small number of men supervised also suggests a limit on the scope of the C.O. 4's supervisory authority. Coupled with the large number of senior management officials on location, his authority was very confined.

The only responsibility that tipped the balance was his after 5:00 duties, during which he assumed full on-site responsibility. Despite the routinized duties and the fact a senior manager was always on call, the potential for difficulty could require the C.O. 4 to exercise independent discretion and initiative. Given the potential for trouble which would arise quickly and could endanger the safety of others, the C.O. 4 was in a position requiring supervisory or managerial authority. The need for constant surveillance of the other staff for the person in charge also constituted supervisory authority which, in the context of this job, was exercised for a significant portion of his time and required him to be excluded from the bargaining unit.

UNION: O.P.S.E.U.

EMPLOYER: Crown in Right of Ontario
(Ministry of Industry and
Tourism)

INDIVIDUAL COMPLAINANT: B. Williams

TYPE OF APPLICATION/COMPLAINT: Employee Status

DECISION DATE: Dec. 23/77

PANEL: O.B. Shime
P. Riggin
C. Jecchinis

SUMMARY

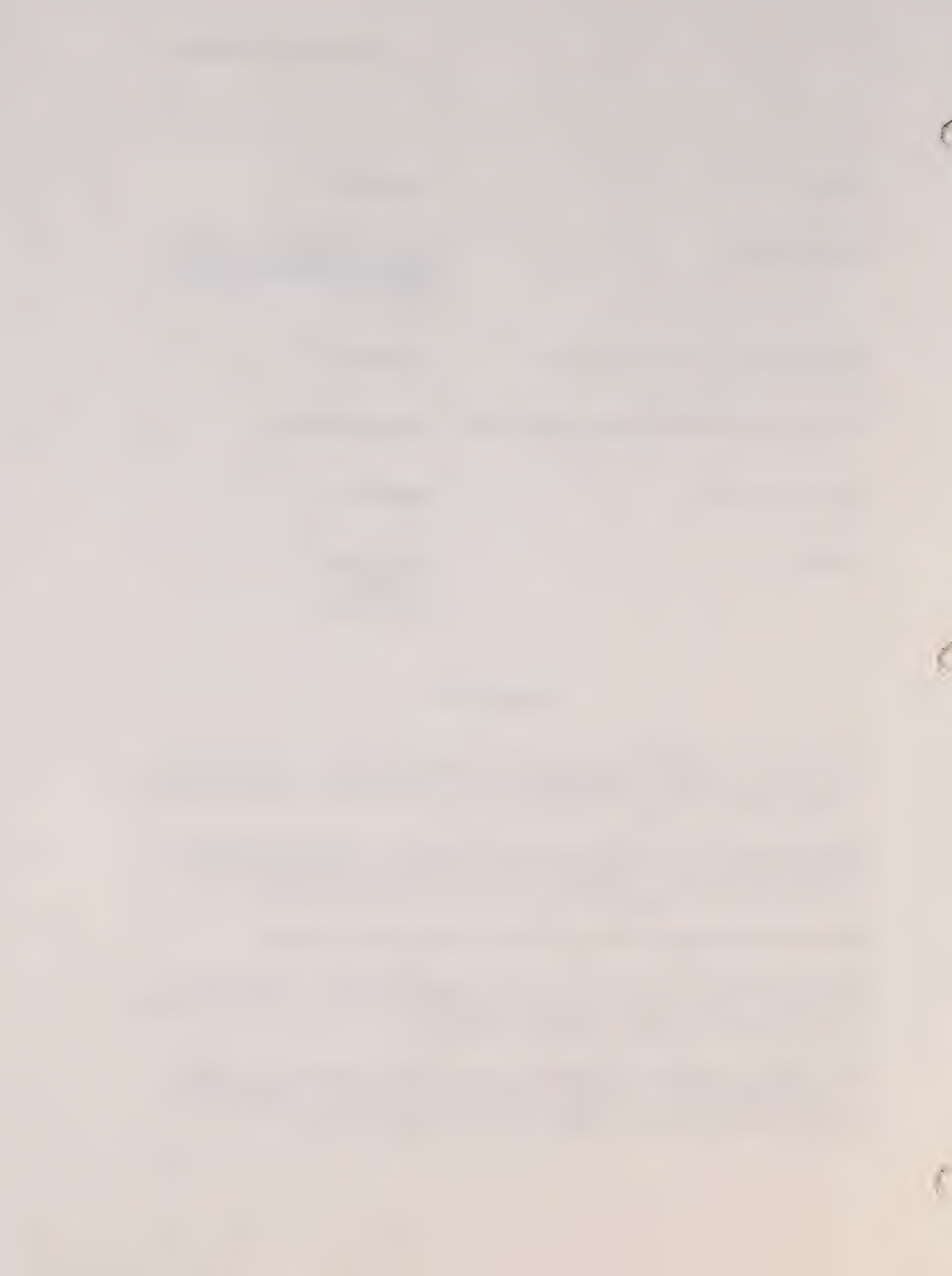
EMPLOYEE STATUS - Industrial Development Officer 3 - Management consultant - Whether involvement in union would harm his effectiveness is assisting Ministry clients - Section 1(1)(l)(viii)

EMPLOYEE STATUS - Management consultant classified as Industrial Development Officer 3 - Whether involvement in union would harm his effectiveness is assisting Ministry clients - Section 1(1)(l)(viii)

SECTION 1(1)(l)(viii) - Extent of Tribunal's residual discretion

SECTION 1(1)(l)(viii) - Industrial Development Officer 3 - Management consultant - Whether involvement in union would harm his effectiveness is assisting Ministry clients - Section 1(1)(l)(viii)

SECTION 1(1)(l)(viii) - Management consultant classified as Industrial Development Officer 3 - Whether involvement in union would harm his effectiveness is assisting Ministry clients - Section 1(1)(l)(viii)



Employee was an Industrial Development Officer 3 in the small business division of the Peterborough office, assisting new industries to locate in the area and assisting existing industries with problems. In some cases, he had consulted about labour costs and labour problems.

Employer claimed he was a management consultant who should identify with the values and problems of the corporations he was serving, and therefore should be excluded from the bargaining unit under s. 1(1)(m)(viii) [now s. 1(1)(l)(viii)] even though he admittedly did not exercise a managerial function. There was no evidence companies had refused to deal with him because of his union involvement, but employer argued they might not have confidence in the employee if they knew about his union involvement.

Held: employee should not be excluded from the bargaining unit.

Section 1(1)(m)(viii) [1(1)(l)(viii)], although appearing to give the Tribunal a wide discretion to exclude persons from the bargaining unit, should be used only in exceptional circumstances. Nothing in the Industrial Development Officer's internal duties rendered him managerial. The mere fact that someone outside the government might object to someone's union involvement is not sufficient to disqualify the person from the bargaining unit. Employee had been a member of the bargaining unit for some time without impairing his functions, and Tribunal was reluctant to disturb the status quo where there had been no interference.

An extensive area of the employee's services would not be affected by his bargaining unit membership, and some of the other matters discussed were in the public domain in any event. There was no reason to believe that when asked to discuss sensitive labour issues he could not make a legitimate, factual assessment and advise accordingly. If the employee's union activities did affect his job performance there was ample precedent to allow the employer to transfer the employee, or to seek a reconsideration by the Tribunal.

UNION: O.P.S.E.U.

EMPLOYER: Crown in Right of Ontario
(Ministry of Solicitor General)

INDIVIDUAL COMPLAINANT: G. Smith

TYPE OF APPLICATION/COMPLAINT: Employee Status

DECISION DATE: Jun. 8/77

PANEL: O.B. Shime
P. Riggin
C. Jecchinis

SUMMARY

EMPLOYEE STATUS - Secretary to Director of Forensic Sciences, Centre of Forensic Sciences - Whether confidential to a manager - Section 1(1)(l)(vi)

EMPLOYEE STATUS - Position confidential to a manager - Secretary to Director of Forensic Sciences, Centre of Forensic Sciences - General principles of s. 1(1)(l)(vi)

SECTION 1(1)(l)(vi) - Principles and intent of section

SECTION 1(1)(l)(vi) - Secretary to Director of Forensic Sciences, Centre of Forensic Sciences - Whether confidential to a manager

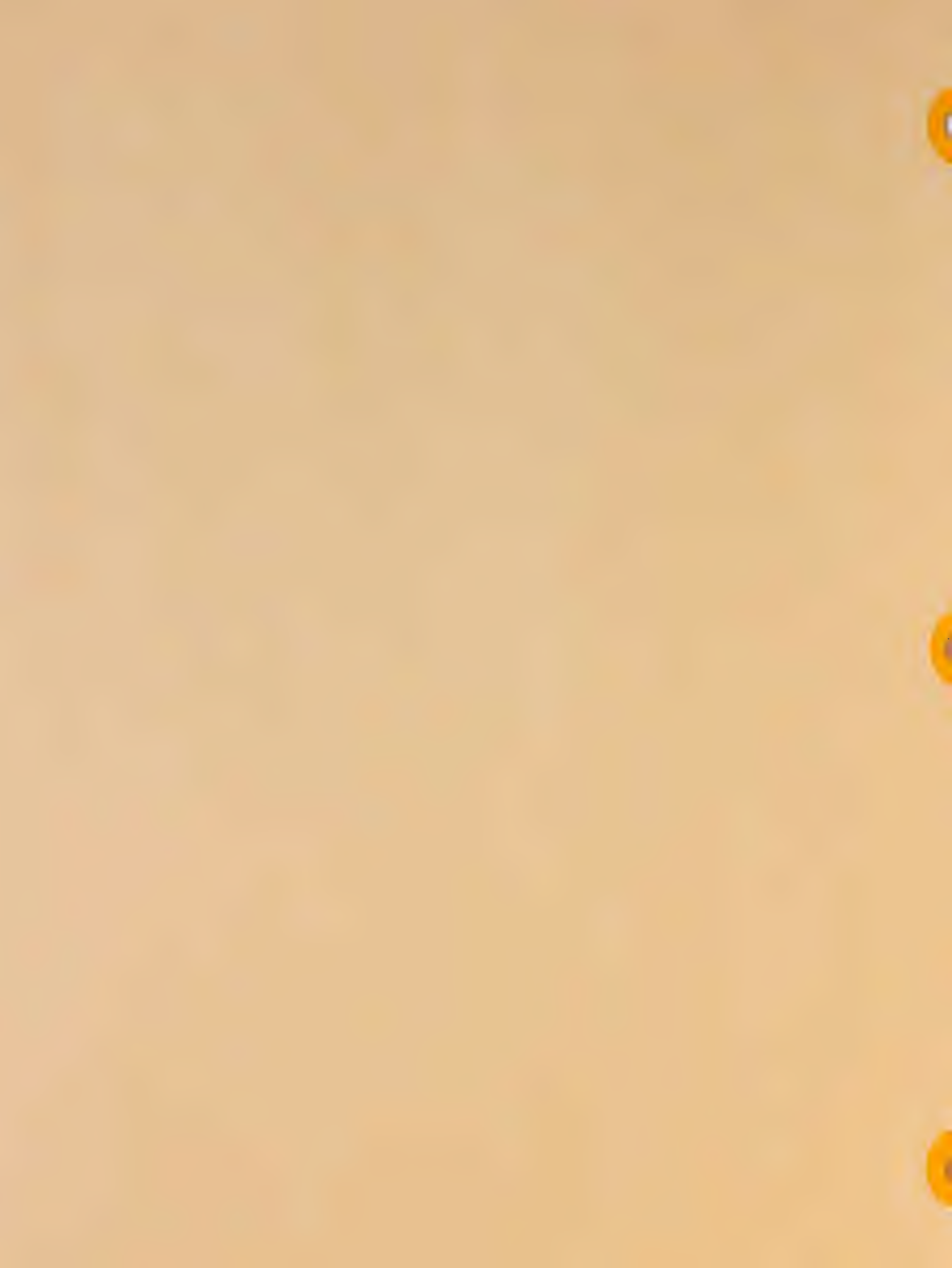
Issue was employee status of private secretary to the Director of Forensic Sciences at the Centre of Forensic Sciences. Employer claimed she was employed in a position confidential to the Director and therefore should be excluded from the bargaining unit under s. 1(1)(m)(vi) [now 1(1)(l)(vi)].

Held: secretary was not an employee under the Act and was excluded from the bargaining unit by virtue of s. 1(1)(m)(vi) [now 1(1)(l)(vi)].

Under s. 1(1)(m)(vi) [1(1)(l)(vi)] it is necessary to determine the duties and responsibilities of the affected employee as well as the person to whom he or she is alleged to be confidential. This required assessment both of secretary and Director.

Centre, although part of the Ministry of the Solicitor General, functioned to a large extent as an autonomous unit, and Director was in charge of setting organizational objectives and policy, budgets and spends a significant amount of time in supervision of employees and dealing with grievances. He was clearly a managerial employee under s. 1(1)(m) of Act [now 1(1)(l)], as it is not even necessary that the policy functions under s. 1(1)(m)(ii) [1(1)(l)(ii)] are exercised in relation to employer-employee relations, and in addition he fell within the meaning of ss. 1(1)(m)(iii) and (iv) [1(1)(l)(iii) and (iv)].

Director's confidential secretary was privy to all confidential matters he dealt with, including employee discipline and grievances and substantive matters of a highly confidential nature between the Centre and other law enforcement agencies. She was in contact with a broad range of information that touched on collective bargaining in such a way that disclosure would adversely affect the employer's interest, including full budget information. Section 1(1)(m)(vi) [1(1)(l)(vi)] relates to persons employed in a confidential capacity in matters other than labour relations and is intended to exclude persons in order to facilitate the operations of a management team where those persons are necessary adjuncts to the team. Secretary was part of the executive group and was involved in a substantial number of confidential matters. She was clearly employed in a confidential capacity to a manager under s. 1(1)(m)(vi) [1(1)(l)(vi)].



UNION: **O.P.S.E.U.**

EMPLOYER: **Ministry of Transportation & Communications**

INDIVIDUAL COMPLAINANT: **A.E.J. Cote**

TYPE OF APPLICATION/COMPLAINT: **Religious Objection**

DECISION DATE: **Mar. 30/77**

PANEL: **O.B. Shime
J.H. McGivney
J. Sack**

SUMMARY

RELIGIOUS OBJECTION - Designation of charity where parties cannot agree - Principles

Parties could not agree on a charitable organization to receive amounts equivalent to applicant's union dues.

Held: Tribunal should designate a charitable organization located where the applicant either lives or works. The Canadian Cancer Society (North Bay Unit) was designated.

UNION: O.P.S.E.U.

EMPLOYER: Hamilton Psychiatric Hospital
(Ministry of Health)

INDIVIDUAL COMPLAINANT: M. Hamilton et al.

TYPE OF APPLICATION/COMPLAINT: Duty of Fair Representation

DECISION DATE: Mar. 17/78

PANEL: O.B. Shime
J.H. McGivney
S.R. Hennessy

SUMMARY

DUTY OF FAIR REPRESENTATION - Refusal to pursue grievance - Standards - Whether arbitrary or discriminatory - Section 30

DUTY OF FAIR REPRESENTATION - Failure to negotiate to correct wage discrepancy - Lack of communication - Whether arbitrary or discriminatory - Section 30

SECTION 30 - Duty of fair representation - Refusal to pursue grievance - Standards - Whether arbitrary or discriminatory

SECTION 30 - Duty of fair representation - Failure to negotiate to correct wage discrepancy - Lack of communication - Whether arbitrary or discriminatory

Due to an anomaly in procedure for recruiting and training nurses, the applicants, graduate nurses, were paid less than trainees. They complained under s. 28 [now s.30] that the union had been arbitrary and discriminatory in handling their complaint, in that it did not pursue their grievance and failed to make the wage discrepancy the subject of negotiations.

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Held: complaint dismissed.

While unions should pursue legitimate grievances vigorously, it is appropriate for them to settle or compromise grievances that are questionable or that, although they have a chance of success, would not advance the interests of the bargaining unit as a whole. In this case, the pay practices were not a breach of the collective agreement. Since the union's representative reasonably concluded that there was no chance of success, the union was not arbitrary or discriminatory in failing to pursue the grievance further. His duty was only to fairly assess the matter and make a decision, not to be right in his conclusion, and he clearly met this duty. Even if the grievance had been meritorious, he would have been entitled to settle, resolve or withdraw it if doing so would serve the greater interests of the bargaining unit.

The fact that a union representative in the grievance arbitration process knew about the wage discrepancy did not make it automatic or expected that the issue would be transferred to the negotiating process, given the size and administrative structure of the union. Union used democratic process to set negotiating demands and had made applicants aware of the procedure. Applicants had ample opportunity to bring forward their concerns but did not do so through the proper channels. Union did not act arbitrarily or discriminatorily or brush aside applicants' complaints. There was a breakdown of communications between the union officials concerned, and at most the union was negligent in not pursuing the matter, but this was not a violation of its duty of fair representation under s. 28 [now s. 30].

UNION: O.P.S.E.U.

EMPLOYER: Crown in Right of Ontario

INDIVIDUAL COMPLAINANT: W.S. Morgan

TYPE OF APPLICATION/COMPLAINT: Religious Objection

DECISION DATE: Nov. 24/77

PANEL: O.B. Shime
R.P. Riggin
J. Sack

SUMMARY

RELIGIOUS OBJECTION - Preference to pay money for other purposes - No objection to union - Exemption denied - Section 16(2)

SECTION 16(2) - Religious objection to union dues - Preference to pay money for other purposes - No objection to union - Exemption denied

Applicant, although a sincerely religious person, did not object to paying union dues on religious grounds but simply wished to divert the funds for religious or charitable purposes.

Held: application dismissed. A preference that union dues be used for other purposes cannot support an exemption under s. 15 [now s. 16].

UNION: **C.U.P.E., Local 1750**

EMPLOYER: **Crown in Right of Ontario**

INDIVIDUAL COMPLAINANT: **G.H. Moore**

TYPE OF APPLICATION/COMPLAINT: **Religious Objection**

DECISION DATE: **Feb. 10/78**

PANEL: **O.B. Shime
J.H. McGivney
S.R. Hennessy**

SUMMARY

RELIGIOUS OBJECTION - Designation of charity where parties cannot agree - Applicant requesting charity and union not opposing request

Parties were unable to agree on designation of a charitable organization to receive amounts equivalent to applicant's union dues. Tribunal designated the United Way of Metro Toronto. Subsequently, the applicant sought a reconsideration, and the union did not object to the charity chosen by the applicant.

Held: in view of applicant's request for a reconsideration and union's position that it had no further interest in proceedings, applicant's requested charity, the Bethany Lodge, was designated as the charitable organization to receive his dues.

UNION: **O.P.S.E.U., Local 209,
Applicant; and O.P.S.E.U.,
Respondent**

EMPLOYER: **Crown in Right of Ontario**

INDIVIDUAL COMPLAINANT: **--**

TYPE OF APPLICATION/COMPLAINT: **Duty of Fair Representation**

DECISION DATE: **Feb. 16/78**

PANEL: **O.B. Shime
R.P. Riggin
S.R. Hennessy**

SUMMARY

DUTY OF FAIR REPRESENTATION - Procedure - Appointment of investigator - Duties of investigator - Section 32

PROCEDURE - Duty of fair representation - Appointment of investigator - Duties of investigator - Section 32

SECTION 32 - Duty of fair representation - Procedure - Appointment of investigator - Duties of investigator - Section 32(4)

SECTION 32(4) - Duty of fair representation - Procedure - Appointment of investigator

Applicant claimed certain employees had been dealt with contrary to s. 28 of Act [now s. 30]. Respondent claimed Tribunal had no jurisdiction to inquire into the matter. Issue before Tribunal was whether an investigator should be appointed under s. 30 [now s. 32] prior to holding a hearing the determine the issue of jurisdiction.

Held: investigator appointed without hearing the jurisdictional matter, but without prejudice to the union raising the matter at a later hearing if a settlement was not effected.

Where a complaint is made under s. 30 [32] it is preferable to appoint an investigator and not to entertain the matter directly. It is in everyone's best interests to attempt to resolve the issues in an informal way, and an investigator has a broader scope of operation to effect a settlement acceptable to both parties. Although Tribunal can dispense with an investigator under s. 34 [now s. 32(4)], this should only be done where appropriate circumstances are demonstrated.

Report of investigator should be limited to whether or not a settlement has been effected and should not detail any statements made to the investigator by the parties.

UNION: O.P.S.E.U.

EMPLOYER: Ministry of Correctional Services

INDIVIDUAL COMPLAINANT: C. Leutz et al.

TYPE OF APPLICATION/COMPLAINT: Employee Status

DECISION DATE: May 15/78

PANEL: O.B. Shime
R.P. Riffin
S.R. Hennessy

SUMMARY

EMPLOYEE STATUS - Individual employee's right to apply for determination of status - Section 40(1)

PROCEDURE - Employee status - Individual employee's right to apply for determination of status - Section 40(1)

SECTION 40(1) - Employee status - Individual employee's right to apply for determination of status

Applicants, five unit supervisors at the Toronto Jail classified as Correctional Officers 3, claimed they should be excluded from the bargaining unit as managerial employees. Union challenged their right to apply to determine their status, saying only the employer or the recognized bargaining agent could apply under s. 38 of the Act [now s. 40(1)].

Held: application dismissed.

Although the Act grants the employer and the union certain exclusive functions, it also protects the rights of individuals, particularly in the matters of religious

objections to union dues and the union's duty of fair representation. However, both the employer and the union have an interest in the matter of employee status and this provides practical protection to employees. Where the legislature intended to grant individual rights under the Act, it said so specifically. In the absence of such language in s. 38 [s. 40], it should be presumed that no individual rights were intended. The issue of status is not such an fundamental right that it requires overriding considerations in interpreting the Act.

A similar provision of the Ontario *Labour Relations Act* has been interpreted so that only the employer or the union can apply to determine status, and the Tribunal agreed that a similar interpretation should be given to s. 38 [s. 40]. Since the bargaining referred to in s. 38 was carried on between the employer and the union, and since individuals did not have status to bargain, any question that might arise could only arise between the employer and the union.

UNION: O.P.S.E.U.

EMPLOYER: Ministry of Health

INDIVIDUAL COMPLAINANT: L. Lamey

TYPE OF APPLICATION/COMPLAINT: Employee Status

DECISION DATE: May 12/78

PANEL: O.B. Shime
R.P. Riggin
S.R. Hennessy

SUMMARY

EMPLOYEE STATUS - Nursing assistant hired to help phase out hospital unit - Whether project of a non-recurring kind - Section 1(1)(f)(vii)

EMPLOYEE STATUS - Project of a non-recurring kind - Nursing assistant hired to help phase out hospital unit - Section 1(1)(f)(vii)

SECTION 1(1)(f)(vii) - Project of a non-recurring kind - Nursing assistant hired to help phase out hospital unit

Issue was status of employee appointed to the staff of the North Bay Psychiatric Hospital. Union claimed she was a permanent employee, but employer claimed she was appointed on contract to the unclassified staff to help phase out the mental retardation unit, and therefore was engaged on a project of a non-recurring nature and was excluded under s. 1(1)(g)(vi) [now s. 1(1)(f)(vii)]. Unit had been in process of being phased out for three years and no definite completion date could be set.

Employee in question, a nursing assistant, had been employed with unit for over two years, although she was originally told her employment would last only a few months. She had entered into a series of contracts extending her service.

Held: application dismissed; employee was excluded under s. 1(1)(g)(vi) [s. 1(1)(f)(vii)].

Although employee's nursing work was part of regular activity of hospital and was of a recurring kind, she was hired to help phase out the unit. This was a bona fide undertaking of a non-recurring nature, even though there was no definite termination date. Employee clearly knew she was being hired on a temporary basis. The phasing out was a plan or scheme or planned undertaking, making it a "project" within the meaning of the Act. The project required additional staff to carry it out and it was irrelevant that their work was similar to work performed by the permanent staff.

UNION: **C.U.P.E. Ontario Housing Corporation Local 767 (Metro), Applicant and O.P.S.E.U., Intervener**

EMPLOYER: **Crown in Right of Ontario**

INDIVIDUAL COMPLAINANT: **--**

TYPE OF APPLICATION/COMPLAINT: **Bargaining Authority**

DECISION DATE: **Feb. 28/79**

PANEL: **O.B. Shime
P. Riggin
J. Sack**

SUMMARY

BARGAINING RIGHTS - Job evaluation system - Whether limited to bargaining external system or whether entitled to bargain on components - Whether proposed grading system legitimate - Right to bargain job descriptions - Sections 7 and 18

JOB DESCRIPTIONS - Bargaining authority - Sections 7 and 18

JOB EVALUATION - Bargaining authority - Whether limited to bargaining external system or whether entitled to bargain on components - Whether proposed grading system legitimate - Right to bargain job descriptions - Sections 7 and 18

JOB EVALUATION SYSTEM - Bargaining authority - Whether limited to bargaining external system or whether entitled to bargain on components - Whether proposed grading system legitimate - Right to bargain job descriptions - Sections 7 and 18

SECTION 7 - Bargaining authority - Job evaluation system - Whether limited to bargaining external system or whether entitled to bargain on components - Whether proposed grading system legitimate - Right to bargain job descriptions - Section 18

SECTION 18 - Bargaining authority - Job evaluation system - Whether limited to bargaining external system or whether entitled to bargain on components - Whether proposed grading system legitimate - Right to bargain job descriptions - Section 7

Questions arose in the course of bargaining between both employer and applicant and employer and intervener as to job evaluation system proposals. Matters were heard together under s. 38(2) [now s. 40(2)].

Held: O.P.S.E.U.'s proposal was not authorized under the Act; C.U.P.E.'s proposal was bargainable.

Meaning of the word "classification" in the Act has been blurred, as it is used in both the prohibitive and permissive sections of the Act. However, the intent of the legislative amendment to s. 6 [now s. 7] was to increase the union's bargaining rights. Section 6 [7] did not restrict negotiability to an external system as opposed to the internal parts of a system, but included the system as well as its component parts that are not excluded by s. 17 [now s. 18].

Employer's right under the *Public Service Act* to "evaluate and classify each position" was consistent with employer's s. 17 [18] right to "determine...the classification of positions". This meant that once positions were established, their placement in appropriate groupings remained with the employer, even though this would bear on the wage rates for the positions.

Employer used a grade description system in which each class series of positions had its own grades. O.P.S.E.U. proposed a comprehensive grading procedure which would apply across the entire bargaining unit and tie into wage rates. This would eliminate the present categories and groupings but would preserve existing classifications.

O.P.S.E.U.'s proposal to introduce a grading system where the relativities between classifications would be determined was simply a refinement of the existing classification system which attempted to limit the groupings or classifications open to the employer. This was an indirect attempt to classify positions and was in breach of the employer's exclusive function. Calling the system "grading" rather than "classification" did not change its nature, and accordingly the union's proposal was not bargainable. Similarly, a proposal on a non-authorized matter that required consultation and possible adjudication was not authorized under s. 6 [7].

C.U.P.E.'s proposal requested the right to negotiate job descriptions, but employer claimed this was equivalent to classification and would affect its other exclusive rights under s. 17 [18] such as the right to determine complement, organization, assignment, work methods and procedures. Job description was only the first step in the classification system, and Tribunal found that it was not immune from bargaining. Both describing a position and the method or terms used to describe the position were bargainable matters. This would not affect employer's exclusive rights to first organize the work force, then assign the work and determine methods and procedures, and classify the position once the job description was prepared. Even where there was only a single position in a classification, the two processes were separate and the union was entitled to be involved in the job description process.

UNION: O.P.S.E.U.

EMPLOYER: Crown in Right of Ontario
(Addiction Research
Foundation)

INDIVIDUAL COMPLAINANT: --

TYPE OF APPLICATION/COMPLAINT: Certification

DECISION DATE: Nov. 27/78

PANEL: O.B. Shime
R.P. Riggan
J. Sack

SUMMARY

BARGAINING UNIT - Certification - Appropriateness of local unit vs. all-employee unit

CERTIFICATION - Bargaining unit - Appropriateness of local unit vs. all-employee unit

Union sought bargaining unit of all employees at the Ottawa-Carleton Centre of the Addiction Research Foundation, one of 34 locations throughout the province. Employer argued appropriate unit was all employees of the Addiction Research Foundation, with certain exceptions.

Held: certification application dismissed.

In deciding on appropriateness of a bargaining unit, the Tribunal should consider the right of the employees to organize, the viability of the proposed unit, and whether the proposed unit is conducive to industrial peace and stability. Often there will be more than one appropriate unit, and the largest one will generally be best for industrial peace and for the employees. Small, fragmented units should be avoided

to avoid whipsawing, jurisdictional disputes and additional costs. This is especially important in the public sector. However, there may be situations where smaller units should be recognized.

In this case, a more comprehensive unit than that sought by union was indicated. There was a community of interest among employees in the different geographic centres who performed the same type of work under similar conditions. Furthermore, the Ottawa-Carleton Centre did not operate as an independent, autonomous unit. All the organizational forces tended toward centralization, including budget and personnel policies and programs and other policies. Unit proposed by the employer was appropriate; unit proposed by the union was not. As the union did not have sufficient membership within the larger unit, the application was dismissed.

UNION: O.P.S.E.U.

EMPLOYER: Ministry of Northern Affairs

INDIVIDUAL COMPLAINANT: --

TYPE OF APPLICATION/COMPLAINT: Unfair Labour Practice

DECISION DATE: Apr. 30/79

PANEL: O.B. Shime
J.H. McGivney
S.R. Hennessy

SUMMARY

INTERFERENCE WITH UNION - Manager making negative comments about employees joining bargaining unit - Mitigating circumstances and no anti-union motive - Remedy - Sections 26 and 29

UNFAIR LABOUR PRACTICE - Manager making negative comments about employees joining bargaining unit - Mitigating circumstances and no anti-union motive - Remedy - Sections 26 and 29

SECTION 26 - Manager making negative comments about employees joining bargaining unit - Mitigating circumstances and no anti-union motive - Remedy - Section 29

SECTION 29 - Manager making negative comments about employees joining bargaining unit - Mitigating circumstances and no anti-union motive - Remedy - Section 26

Union claimed employer had interfered with right of Northern Affairs Officers to become members of the union, contrary to ss. 24 and 27 [now ss. 26 and 29]. At regular two-day regional meeting, manager brought up subject of pending application to include Officers in bargaining unit, and asked employees to give him their views in writing. When one employee refused, he then withdrew request. A discussion followed and another manager eventually suggested they break into geographic groups to discuss situation and make concerns known to employer. Managers did not express their views about unionization or try to tell employees what they should do.

Held: application under s. 24 [s. 26] allowed; applications under s. 27 [s. 29] and for consent to prosecute dismissed.

Given relationship between this union and this employer where representation rights already existed, discouragement or encouragement could not affect those rights in the context of this case. Inclusion in the bargaining unit did not depend on employees' membership but was a question of law. Matter should not be treated as if it were an application for certification, since statements could have no effect on the application.

Conduct of a single manager could not be attributed to Ministry or to employer as a whole, as it was not part of a scheme or conspiracy and there were mitigating circumstances in that minutes of the meeting were circulated and the employer ultimately agreed to include the employees in the bargaining unit. There was no anti-union motive on employer's or Ministry's part. While some of manager's comments were inappropriate, he did not pursue them with vigour and yielded to the employees' wishes, and part of the discussion was initiated by the employees themselves.

Manager should not have called the application a "bombshell" or asked employees for written statements. However, given the circumstances of self-correction and the lack of an anti-union motive on employer's part, proper remedy under s. 24 [s. 26] was merely to instruct manager to refrain from conduct that could be interpreted as an attempt to dissuade employees from joining union.

Application as to s. 27 [s. 29] and the other respondents was dismissed. This was not an appropriate case for prosecution, since the situation had already been resolved.

UNION: **O.P.S.E.U., Applicant; S.E.I.U.
Local 210, Intervener**

EMPLOYER: **Ministry of Health**

INDIVIDUAL COMPLAINANT: **--**

TYPE OF APPLICATION/COMPLAINT: **Successor Rights**

DECISION DATE: **Apr. 30/79**

PANEL: **O.B. Shime
J.H. McGivney
C. Jecchinis**

SUMMARY

BARGAINING UNIT - Ministry taking over ambulance dispatch service - Appropriate bargaining representative - Whether local unit or province-wide unit justified - Successor Rights (Crown Transfers) Act

SUCCESSOR RIGHTS - Ministry taking over ambulance dispatch service - Appropriate bargaining representative - Whether local unit or province-wide unit justified - Successor Rights (Crown Transfers) Act

Applicant applied under ss. 4 and 5 of the Successor Rights (Crown Transfers) Act, 1977 for declaration that it is a bargaining agent for ambulance dispatchers formerly employed by Metropolitan General Hospital in Windsor. Ambulance dispatch service had been transferred to Ministry of Health. There were four dispatchers involved. Dispatchers were represented by intervener and had a collective agreement that was supposed to run for about 16 more months.

Purpose of transfer was to centralize dispatch services and eliminate duplication throughout the province. Ministry had other dispatchers in other areas represented by applicant, who had a province-wide bargaining unit, and applicant claimed they

had a community of interest with these employees. Intervener claimed purpose of Act was to preserve bargaining rights on behalf of union that formerly represented employees, and that there had been no intermingling or any effective change in the bargaining unit.

Held: application allowed; intervener's application dismissed.

Allowing intervener to retain bargaining rights would create undue fragmentation among persons doing the same work throughout the province. This would cause administrative inefficiency, inconvenience, would affect employees' mobility and would not be conducive to bargaining stability, especially given the small number of employees involved.

UNION: O.P.S.E.U.

EMPLOYER: Ministry of Community and Social Services

INDIVIDUAL COMPLAINANT: B. Burton et al.

TYPE OF APPLICATION/COMPLAINT: Employee Status

DECISION DATE: Mar. 26/80

PANEL: O.B. Shime
J.H. McGivney
C. Jecchinis

SUMMARY

EMPLOYEE STATUS - Food Service Supervisor, Huronia Regional Centre - Whether managerial

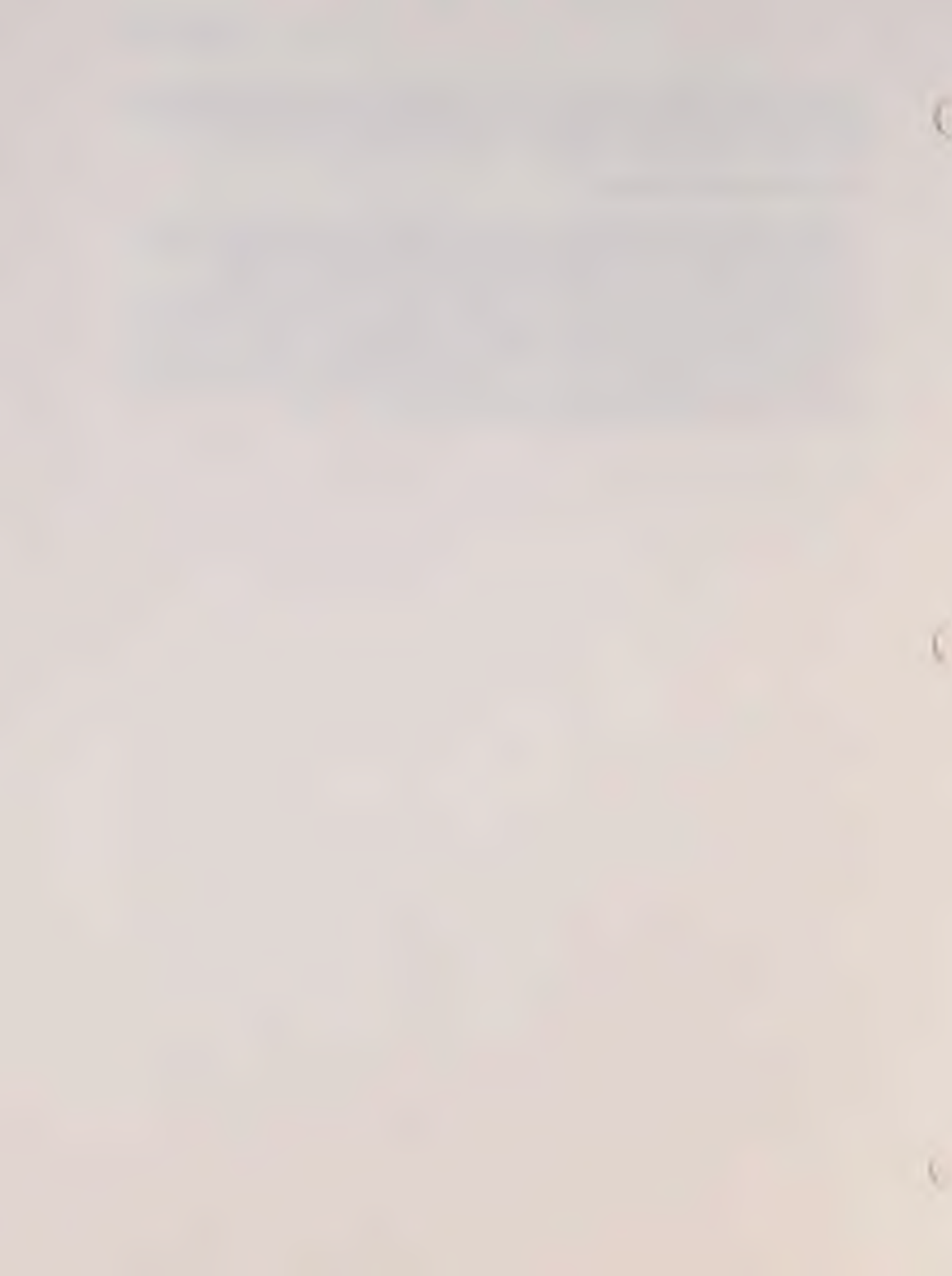
Issue was employee status of Food Service Supervisor at Huronia Regional Centre. Four Food Service Supervisor positions reported to assistant Food Service Administrator, who reported to Food Service Administrator.

Supervisors were responsible for two specific areas and for all areas of the Centre for part of the day, and supervised one full-time and one part-time employee in each of Centre's cottages. They trained new personnel and participated in hiring, employee appraisal and administration of collective agreement. They could warn employees verbally or in writing and recommend more serious discipline to their supervisors. They also scheduled staff, maintained attendance records, authorized overtime and responded to staff complaints. At certain times of day they supervised ten full-time and six part-time employees. They attended management meetings where policy matters and staff matters were discussed.

Union claimed supervisors were more like group leaders than supervisors, and were employees under the Act because they did not act independently. Employer claimed their duties were managerial in nature.

Held: application dismissed.

Although supervisors fell close to the line, they were not employees under the Act. Their sum total involvement with employees amounted to managerial status, even though their operational duties were not managerial. Responsibilities for hiring, training, promotions, scheduling and appraisal were managerial in nature, and they did have real authority to make decisions although they seldom had to exercise it due to efficiency of organization. Participation on the management team, plus their broader daily and weekend responsibilities for overseeing the complete institution and its staff suggested managerial authority.



UNION: **Amalgamated Transit Union,
Local 1587**

EMPLOYER: **Toronto Area Transit
Operating Authority**

INDIVIDUAL COMPLAINANT: **--**

TYPE OF APPLICATION/COMPLAINT: **Certification**

DECISION DATE: **Jun. 23/80**

PANEL: **O.B. Shime
P. Riggin
J. Sack**

SUMMARY

BARGAINING UNIT - Certification - Appropriateness of local vs. all-employee unit - Crown agency akin to municipal transit operation

CERTIFICATION - Bargaining unit - Appropriateness of local vs. all-employee unit - Crown agency akin to municipal transit operation

CERTIFICATION - Employee organization - Newly chartered local of private sector union - Whether appropriate - Whether engaged in political activity - Section 1(1)(g)

EMPLOYEE ORGANIZATION - Newly chartered local of private sector union - Whether appropriate - Whether engaged in political activity - Section 1(1)(g)

SECTION 1(1)(g) - Employee organization status - Newly chartered local of private sector union - Whether appropriate - Whether engaged in political activity

Union applied to represent all maintenance employees of the employer employed at the Steeprock Garage of G.O. Transit in Metro Toronto, except foremen and persons above the rank of foremen. Employer disputed union's status as an employee organization under s. 1(1)(h) of Act [now s. 1(1)(g)], and also disputed appropriateness of bargaining unit.

Held: union had status as an employee organization; appropriate bargaining unit was defined; vote was ordered.

Union claimed it was a newly chartered local which had not organized any private sector employees, and which was formed to avoid any suggestion of political taint. Employer claimed it was not an employee organization because it represents private sector employees and because of its capacity to engage in political activity.

Act does not preclude a union representing Crown employees from representing other employees not under the Act. This local was formed for the specific purpose of representing employees under the Act. Union need not be formed for sole purpose of representing employees under the Act, so the union was not in breach of s. 1(1)(h) [1(1)(g)] on this account. With regard to political activity, union's constitution makes itself subordinate to provincial laws. Since the Act therefore becomes paramount and supersedes any authorization to engage in political activity, and since local had not in fact engaged in any form of political activity, there was no violation of Act.

Larger bargaining units are generally preferable in the public sector. However, this employer, unlike many others, is limited in its geographic scope, so there was less concern about bargaining unit fragmentation. Functional divisions tended to correspond to location, and although administration and finance are highly centralized, employees in similar classifications are not broadly spread out. Employer was closer in type to a normal municipal transit operation than to a provincial organization, and its operation suited a more classical definition of bargaining units along white collar and blue collar lines.

However, the bargaining unit proposed by the union was not appropriate, as only a segment of the blue-collar employees would be represented. This could lead to a multiplicity of bargaining units. Vehicle maintenance workers should be in a unit with building maintenance workers, which would divide the organization horizontally rather than vertically. Appropriate unit was all employees in the province except foremen, persons above the rank of foremen, and office and technical staff. A representation vote was ordered.

UNION: Amalgamated Transit Union,
Local 1587

EMPLOYER: Toronto Area Transit
Operating Authority

INDIVIDUAL COMPLAINANT: --

TYPE OF APPLICATION/COMPLAINT: Certification

DECISION DATE: Sept. 26/80

PANEL: O.B. Shime
P. Riggan
J. Sack

SUMMARY

BARGAINING UNIT - Certification - Inclusion of certain positions -
Whether more closely allied to blue collar or white collar bargaining unit

CERTIFICATION - Bargaining unit - Inclusion of certain positions -
Whether more closely allied to blue collar or white collar bargaining unit

After previous decision, Tribunal allowed parties to review individual situations not considered at the first hearing, since the bargaining unit found appropriate was not one suggested by either party. Parties sought review of positions of ticket sellers, ticket collectors, technical sales clerks, station attendants, lost property and information clerk, and couriers.

Held: positions should be included in bargaining unit.

Although positions under review might be an appropriate bargaining unit on their own, this would unduly fragment the employees and thus would be inappropriate.

Therefore, the issue was whether these employees should be included in the blue collar or the white collar unit. As they were most closely allied to the blue collar unit in an operational sense, and were distinguishable in many respects from the office and technical positions, they should be included in the bargaining unit.

Since union did not have requisite 35% membership based on inclusion of these employees, decision ordering vote was revoked and the application dismissed, without a time bar under the circumstances.

UNION: O.P.S.E.U.

EMPLOYER: Crown in Right of Ontario

INDIVIDUAL COMPLAINANT: --

TYPE OF APPLICATION/COMPLAINT: Unfair Labour Practice

DECISION DATE: Mar. --/80

PANEL: O.B. Shime
P. Rigglin
J. Sack

SUMMARY

UNFAIR LABOUR PRACTICE - Consent to prosecute - Illegal strike -
Consent granted - Sections 31 and 35

UNFAIR LABOUR PRACTICE - Illegal strike - Consent to prosecute -
Consent granted - Sections 31 and 35

SECTION 31 - Illegal strike - Consent to prosecute - Consent granted -
Section 35

SECTION 35 - Illegal strike - Consent to prosecute - Consent granted -
Section 31

Employer applied for consent to institute a prosecution against the union and certain of its officers for breaching ss. 29 and 33 [now ss. 31 and 35]. A strike took place amongst certain employees despite an injunction by the Supreme Court of Ontario and a declaration of illegality by the Tribunal. The union's president was found to have breached the injunction and was ordered jailed for 35 days.

Held: consent granted against all respondents except the union's president.

A prima facie case was made out; only issue was whether Tribunal should exercise its discretion. Tribunal followed labour relations tribunal practice of not giving extensive reasons so that they would not affect ultimate disposition by the Provincial Court.

With regard to the union's president, this was the first strike that had occurred in the Ontario public service and the president had already served a jail sentence. No useful purpose would be served by granting consent to prosecute in his case, as he had already paid the most severe penalty possible. Although the sentence was imposed for breach of a court order, the intent of the Act's sections had been met.

Consent was granted against the remaining respondents.



UNION: O.P.S.E.U.

EMPLOYER: Ministry of Correctional Services

INDIVIDUAL COMPLAINANT: J.P. Tremlett

TYPE OF APPLICATION/COMPLAINT: Religious Objection

DECISION DATE: Apr. --/80

PANEL: O.B. Shime
R.P. Riggin
C. Jecchinis

SUMMARY

RELIGIOUS OBJECTION - Preference to pay money for religious purposes
- No objection to union - Exemption denied - Section 16(2)

SECTION 16(2) - Religious objection to union dues - Preference to pay money
for religious purposes - No objection to union - Exemption denied

Applicant, a sincerely religious person, did not object to paying union dues because of her religious beliefs, but merely preferred that her union dues be used for religious purposes instead.

Held: application dismissed.

Act requires that an applicant object to paying union dues because of religious convictions. Here, there was no objection. While the applicant's motives may be commendable, her application was not within s. 15 [now s. 16(2)] of the Act.

UNION: **O.P.S.E.U.;**
C.U.P.E. Local 767, Intervener

EMPLOYER: **Metropolitan Housing**
Authority

INDIVIDUAL COMPLAINANT: **--**

TYPE OF APPLICATION/COMPLAINT: **Certification**

DECISION DATE: **Mar. 18/81**

PANEL: **O.B. Shime**
C. Jecchinis
J.H. McGivney

SUMMARY

BARGAINING UNIT - Certification - Appropriateness of all employee unit vs. smaller unit - Effect of O. Reg. 577/72 defining bargaining unit - Extent of Tribunal's jurisdiction

CERTIFICATION - Bargaining unit - Appropriateness of all employee unit vs. smaller unit - Effect of O. Reg. 577/72 defining bargaining unit - Extent of Tribunal's jurisdiction

JURISDICTION OF TRIBUNAL - Certification - Appropriateness of all employee unit vs. smaller unit - Effect of section 3 and O. Reg. 577/72 defining bargaining unit - Extent of Tribunal's jurisdiction

SECTION 3 - Certification - Appropriateness of all employee unit vs. smaller unit - Effect of O. Reg. 577/72 defining bargaining unit - Extent of Tribunal's jurisdiction

Applicant sought certification for bargaining unit of all office and clerical employees in the Metro Housing Branch of the Ontario Housing Corporation, excluding certain positions. Intervener, who by virtue of O. Reg. 577/72 represented all Ontario Housing Corp. employees within Metro Toronto except for office employees and other named exceptions, claimed proper bargaining unit was an "all employee" unit, either all employees within Metro Toronto or all employees in Ontario Housing. Applicant claimed regulations defined bargaining unit and it was not open to Tribunal to alter that definition.

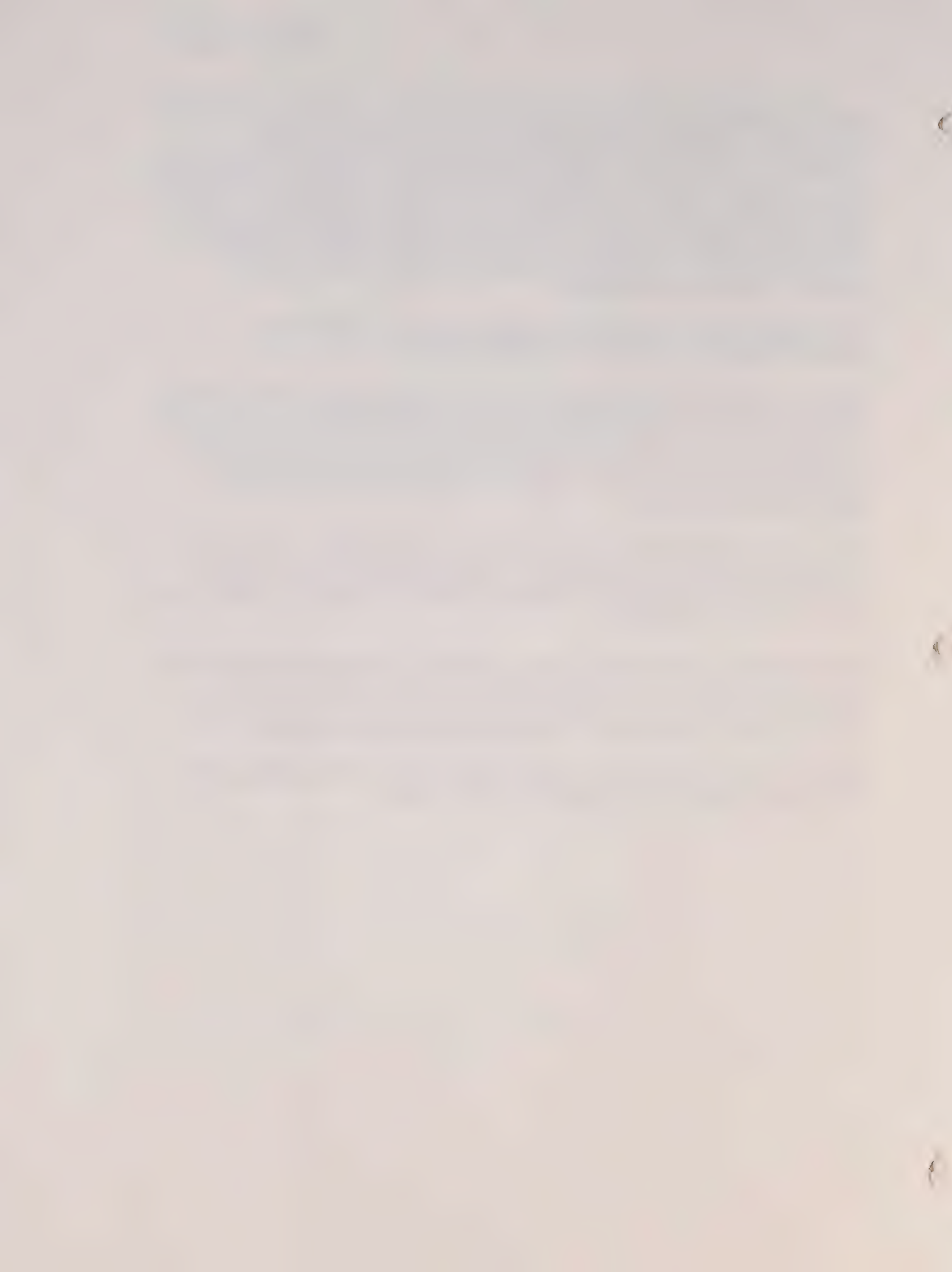
Held: both units were possible appropriate units, and Tribunal's jurisdiction was not limited by O. Reg. 577/72.

An "all employee" unit was prima facie appropriate, as it would ensure efficiency and avoid fragmentation, whipsawing, jurisdictional disputes and additional costs for the employer and the unions. But while an all employee unit may be optimal, a smaller unit may still be appropriate, especially where the lines were drawn along traditional views of a community of interest.

O. Reg. 577/72 did not fetter Tribunal's jurisdiction under s. 3 of Act to determine bargaining unit. Reg. was a transitional provision which preserved existing rights and continued them to the present, subject to the other provisions of the Act.

The bargaining unit described in s. 10 of the Reg. was an appropriate unit, but was not necessarily the only appropriate unit. In fact, it was the minimum appropriate unit, but that unit could still be included in a greater, more comprehensive unit such as an all employee unit.

Tribunal was not required to adopt position of either the applicant or the intervener; matter was set down for continuation.



UNION: **O.P.S.E.U.;**
C.U.P.E. Local 767, Intervener

EMPLOYER: **Metropolitan Housing**
Authority

INDIVIDUAL COMPLAINANT: **D. Ashford et al.**

TYPE OF APPLICATION/COMPLAINT: **Employee Status**

DECISION DATE: **Sept. 23/81**

PANEL: **O.B. Shime**
C. Jecchinis
J.H. McGivney

SUMMARY

EMPLOYEE STATUS - Assistant Project Managers - Whether managerial employees - Sections 1(1)(l)(ii), (iii) and (viii)

SECTION 1(1)(l)(ii) - Assistant Project Managers - Whether managerial employees - Sections 1(1)(l)(iii) and (viii)

SECTION 1(1)(l)(iii) - Assistant Project Managers - Whether managerial employees - Sections 1(1)(l)(ii) and (viii)

SECTION 1(1)(l)(viii) - Assistant Project Managers - Whether managerial employees - Sections 1(1)(l)(ii) and (iii)

Issue was whether Assistant Project Managers were employed in a managerial capacity under ss. 1(1)(m)(ii), (iii) or (viii) of Act [now ss. 1(1)(l)(ii),(iii) or (viii)].

Held: Assistant Project Managers were not employed in a managerial capacity and therefore were employees under the Act.

Although Assistant Project Managers attended meetings concerning administration of programs, this was not involvement in "formulation of organization objectives and policy" under s. 1(1)(m)(ii) [1(1)(l)(ii)]. Their major function was to perform administrative duties, and they only supervised employees infrequently and in a limited scope, when the other three managerial employees were absent. This did not bring them within s. 1(1)(m)(iii) [1(1)(l)(iii)], as a "significant" portion of time was not spent supervising.

Given the number and ratio of managerial persons to maintenance staff, this was not a case for the Tribunal to exercise its discretion to exclude Assistant Project Managers from bargaining unit under s. 1(1)(m)(viii) [1(1)(l)(viii)].

UNION: **O.P.S.E.U.**

EMPLOYER: **Management Board of Cabinet**

INDIVIDUAL COMPLAINANT: **B.F. Parr**

TYPE OF APPLICATION/COMPLAINT: **Religious Objection**

DECISION DATE: **Apr. 10/81**

PANEL: **O.B. Shime
C. Jecchinis
L. Binder**

SUMMARY

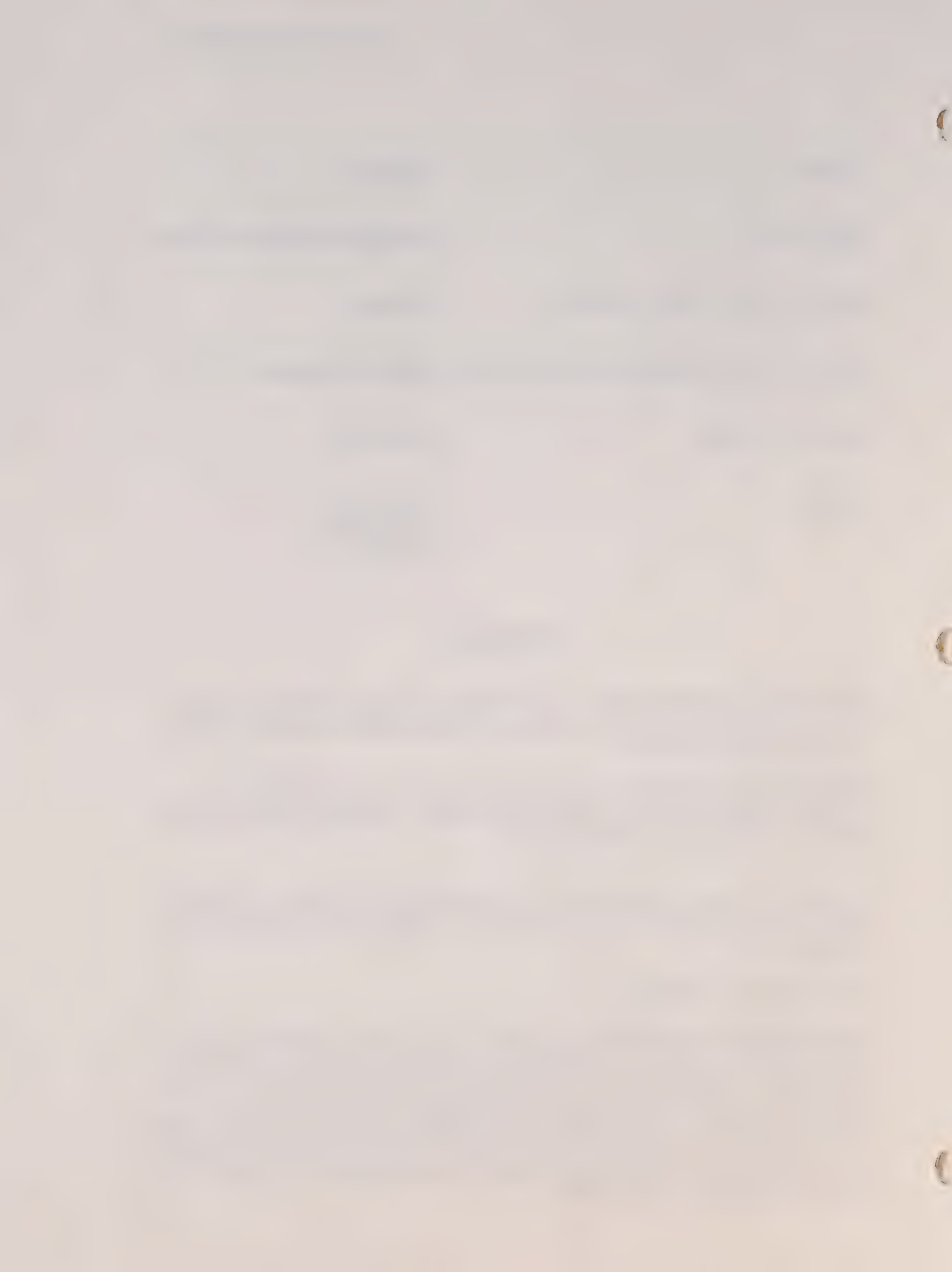
RELIGIOUS OBJECTION - United Church of Canada - Objection having strong secular tone - Whether sufficient nexus between objection and religious belief - Section 16

SECTION 16(2) - Religious objection to union dues - United Church of Canada - Objection having strong secular tone - Whether sufficient nexus between objection and religious belief

Applicant, an active member of the United Church of Canada, sought exemption from paying dues on basis of his religious belief, under section 15 [now s. 16].

Held: exemption allowed.

Applicant strongly objected to union and its activities, and there was a strong secular tone to his objection. However, he did relate his objection to his "personal faith and belief". While this sort of objection always involves some personal, subjective position, on balance applicant had shown a sufficient nexus or connection between his objection and his religious belief. Tribunal could not conclude he was using the Act as a means of supporting his personal secular views or as a ruse to avoid payment of union dues, so he was entitled to an exemption.



UNION: O.P.S.E.U.

EMPLOYER: Ministry of Health

INDIVIDUAL COMPLAINANT: K.P. Ariaratnam

TYPE OF APPLICATION/COMPLAINT: Religious Objection

DECISION DATE: Feb. 12/81

PANEL: O.B. Shime
C. Jecchinis
L. Binder

SUMMARY

RELIGIOUS OBJECTION - Nexus between belief and objection - Objection based on totality of religious way of life - Section 16

SECTION 16(2) - Religious objection to union dues- Nexus between belief and objection - Objection based on totality of religious way of life

Application under section 15 [now s. 16] allowed. Applicants' religious convictions are to be considered from a subjective point of view and there must be a nexus between a religious conviction or belief and the objection to paying union dues. However, the objection need not be based on a particular passage of the Bible or a single part of an applicant's religion, but may stem from the totality of the philosophy or religious way of life.

Here, applicant's daily life was governed by his sincere religious belief and, as part of that belief, he objected to paying union dues. Exemption was ordered.

| | |
|--------------------------------|--|
| UNION: | O.P.S.E.U. |
| EMPLOYER: | -- |
| INDIVIDUAL COMPLAINANT: | D. Knight |
| TYPE OF APPLICATION/COMPLAINT: | Religious Objection |
| DECISION DATE: | Feb. 2/81 |
| PANEL: | O.B. Shime C. Jecchinis L. Binder |

SUMMARY

RELIGIOUS OBJECTION - Designation of charity where parties cannot agree - Principles

Where applicant and union could not agree on charity to receive amounts equivalent to applicant's union dues, which applicant was not required to pay to union due to her religious objection, held: Tribunal should designate a charitable organization located in the area where the applicant either resides or works. The Donors' Association of Owen Sound was designated in this case.

UNION: O.P.S.E.U.

EMPLOYER: --

INDIVIDUAL COMPLAINANT: R.J. Heard

TYPE OF APPLICATION/COMPLAINT: Duty of Fair Representation

DECISION DATE: Oct. 28/81

PANEL: O.B. Shime
J.H. McGivney
C. Jecchinis

SUMMARY

DUTY OF FAIR REPRESENTATION - Ambulance attendant disqualified from job due to medical condition - Whether union's efforts to find him a new job were reasonable - No breach of duty

DUTY OF FAIR REPRESENTATION - Refusal to file grievance - Ambulance attendant disqualified from job due to medical condition - No breach of duty

Complainant, an ambulance driver, suffered a heart attack and became disqualified from that job. He claimed union was in breach of its duty of fair representation in making insufficient efforts to find him a new job.

Held: complaint dismissed.

Union had been making efforts for over one year to help complainant get benefits to which he was entitled under collective agreement and to help him secure new employment. Complainant's opportunities were limited because of his medical condition, limited education and his geographic location. Perfection was not required of the union, and the union's efforts

were reasonable given the limitations of the situation. The fact that its efforts were not successful did not mean it had breached its duty, as the union is not a guarantor or an insurer.

Union's failure to file a grievance on his behalf was not a breach of duty, given that employer had made efforts to find him a new job and there was nothing else to grieve.

UNION: --

EMPLOYER: **Ministry of the Attorney
General**

INDIVIDUAL COMPLAINANT: **B. Pulford**

TYPE OF APPLICATION/COMPLAINT: **Employee Status**

DECISION DATE: **Nov. 20/81**

PANEL: **O.B. Shime
J. McGivney
E. McIntyre**

SUMMARY

EMPLOYEE STATUS - Law Clerk - Whether employed in confidential capacity to excluded person - Whether access to confidential legal files barred bargaining unit membership - Whether Clerk "determined" claims - Sections 1(1)(l)(v) and (vi)

SECTION 1(1)(l)(v) - Law Clerk - Employee status - Whether settling of small claims court matters was "determination" of claims - Section 1(1)(l)(vi)

SECTION 1(1)(l)(vi) - Law Clerk - Employee status - Whether employed in confidential capacity to excluded person, or excluded because of access to confidential legal files - Section 1(1)(l)(v)

Issue was employee status of a Law Clerk who handled collection of compensation money under Criminal Injuries Compensation Act, some investigations and searches, serving of documents, and some small claims matters. He worked under direction of a solicitor or the Claims Manager. Although not managerial, employer claimed he was employed in a confidential capacity to an excluded person under s. 1(1)(m)(vi)

[now 1(1)(l)(vi)], that he had access to confidential files, and that he settled small claims matters and therefore determined claims under s. 1(1)(m)(v) [now 1(1)(l)(v)].

Held: Law Clerk was an employee under the Act.

Section 1(1)(m)(vi) [1(1)(l)(vi)] is intended to exclude persons who are necessary adjuncts to the management team. Clerk here was not allied with the Director of Crown's Civil Law Office in such a way as to require exclusion, as he reported to Claims Manager and Director merely had ultimate responsibility for his work. Since managers ultimately bear responsibility for many people who work under them, this criteria might exclude virtually everyone from the bargaining unit.

Confidential information obtained by Clerk in performing his duties did not require his exclusion from the bargaining unit, as information was limited in nature and scope, and he performed limited role under constant direction of lawyers.

Although there was possibility of Clerk being assigned to investigate a labour matter involving employer and bargaining unit, that had never yet happened. If situation ever did arise, question could be referred to Tribunal.

Clerk did not fall within s. 1(1)(m)(v) [1(1)(l)(v)], as this section contemplates a person who exercises a judicial or quasi-judicial function of some rank, and a person who exercises independent discretion in doing so. Law Clerk acting under instructions to settle claims was not adjudicating or determining claims, as he was not the final authority.

UNION: C.U.P.E. Local 1750

EMPLOYER: Workmen's Compensation Board

INDIVIDUAL COMPLAINANT: --

TYPE OF APPLICATION/COMPLAINT: Bargaining Authority

DECISION DATE: Jan. 24/83

PANEL: O.B. Shime
J.H. McGivney
P.J.J. Cavalluzzo

SUMMARY

BARGAINING RIGHTS - Procedure - Time period during which parties can apply to Tribunal - Arbitration Board's jurisdiction to decide matters on parties' consent - Section 40(2)

JURISDICTION OF BOARD OF ARBITRATION - Bargaining authority - Jurisdiction to decide bargaining authority issues - Effect of parties' consent - Time period during which parties can apply to Tribunal - Section 40(2)

PROCEDURE - Bargaining authority application - Time period during which parties can apply to Tribunal - Arbitration Board's jurisdiction to decide matters on parties' consent - Section 40(2)

SECTION 40(2) - Procedure - Time period during which parties can apply to Tribunal - Arbitration Board's jurisdiction to decide matters on parties' consent

Employer sought ruling on whether job evaluation and job classification matters were within scope of collective bargaining under s. 40(2) of Act. Matters had already been dealt with at arbitration and employer, although arguing lack of jurisdiction before arbitrator, had taken no steps during lengthy proceedings to put issue before

Tribunal. Subsequent judicial review application taken from arbitration award was dismissed because of employer's failure to resort to Tribunal.

Held: application dismissed as being out of time. Employer did not proceed while parties were in the course of bargaining nor during proceedings before a board of arbitration, as required by s. 40(2). Once bargaining and arbitration proceedings were completed, it was too late to proceed to Tribunal. Employer, by its conduct, had effectively waived its right to proceed to Tribunal.

While Tribunal has jurisdiction to decide bargaining authority issues and is not bound by decisions of a board of arbitration, parties may opt by express agreement or by their conduct to have arbitration board decide whether an issue falls within the scope of bargaining. Such a decision would be binding on parties, though not on Tribunal. Here, board of arbitration had already decided issue, which parties by their conduct had placed before it on a consensual basis.

UNION: **Ontario Liquor Boards
Employees' Union**

EMPLOYER: **Liquor Control Board of
Ontario and Liquor Licence
Board of Ontario**

INDIVIDUAL COMPLAINANT: **--**

TYPE OF APPLICATION/COMPLAINT: **Bargaining Authority**

DECISION DATE: **Jan. 24/83**

PANEL: **O.B. Shime
J.H. McGivney
E. McIntyre**

SUMMARY

BARGAINING RIGHTS - Procedure - Time period during which parties can apply to Tribunal - Arbitration Board's jurisdiction to decide matters - Section 40(2)

JURISDICTION OF BOARD OF ARBITRATION - Bargaining authority - Jurisdiction to decide bargaining authority issues - Time period during which parties can apply to Tribunal - Section 40(2)

PROCEDURE - Bargaining authority application - Time period during which parties can apply to Tribunal - Arbitration Board's jurisdiction to decide matters - Section 40(2)

SECTION 40(2) - Procedure - Time period during which parties can apply to Tribunal - Arbitration Board's jurisdiction to decide matters

A board of arbitration awarded improved life insurance benefits for employees and retirees. Union then requested retroactive improvements for employees who had retired in the past, not just for those retiring under current collective agreement.

Matter went back to board of arbitration, where employer disputed board's jurisdiction to make such an award, but board concluded it did have jurisdiction and awarded the benefit to retirees.

Employer then sought judicial review on the merits, and appealed the matter to the Court of Appeal, where it was unsuccessful. Employer now sought a ruling under s. 40(2).

Held: application dismissed as out of time. Application under s. 40(2) must be made during the course of bargaining or during proceedings before a board of arbitration. Once the bargaining and the arbitration proceedings are concluded, an application under s. 40(2) is untimely. Employer here had opportunity to apply to Tribunal during those times but chose not to do so.

Tribunal has paramount jurisdiction in such cases, but its jurisdiction is not exclusive. Where employer chose not to apply to Tribunal during proper times, board of arbitration then had jurisdiction, in its secondary role to the Tribunal, to decide issues before it.

UNION: **O.P.S.E.U.**

EMPLOYER: **Management Board of Cabinet/
Ministry of Transportation and
Communications**

INDIVIDUAL COMPLAINANT: **T. Cairns et al.**

TYPE OF APPLICATION/COMPLAINT: **Employee Status**

DECISION DATE: **Apr. 6/83**

PANEL: **O.B. Shime
L. Binder
E. McIntyre**

SUMMARY

EMPLOYEE STATUS - Party chiefs of survey crews - Responsibility for field supervision - Whether "dealing formally" with grievance procedure - Sections 1(1)(l)(iii) and (iv)

PROCEDURE - Employee status application - Evidence - Representative witnesses

SECTION 1(1)(l)(iii) - Party chiefs of survey crews - Responsibility for field supervision

SECTION 1(1)(l)(iv) - Party chiefs of survey crews - Whether "dealing formally" with grievance procedure

Issue was whether party chiefs and senior party chiefs, employed by Ministry of Transportation and Communications to perform engineering and legal surveying, were employees within meaning of Act.

The first part of the paper discusses the importance of the study. It highlights the need for a comprehensive understanding of the subject matter. The second part of the paper presents the methodology used in the study. It describes the data collection process and the statistical analysis performed. The third part of the paper discusses the results of the study. It presents the findings of the research and compares them with previous studies. The fourth part of the paper discusses the conclusions of the study. It summarizes the main findings and provides recommendations for future research.

The study was conducted in a laboratory setting. The participants were recruited from a local university. The data was collected over a period of six months. The statistical analysis was performed using SPSS software. The results of the study are presented in the following table. The table shows the mean scores for each group of participants. The first group of participants had a mean score of 75. The second group of participants had a mean score of 80. The third group of participants had a mean score of 85. The fourth group of participants had a mean score of 90. The results of the study indicate that there is a significant difference between the groups. The first group of participants performed significantly worse than the other groups. The second group of participants performed significantly better than the first group. The third group of participants performed significantly better than the second group. The fourth group of participants performed significantly better than the third group.

Preliminary issue arose involving procedure when dealing with employee status of a large number of persons.

Held on procedural issue: as a general rule, where a large group of persons with same job title or position is involved, it is preferable to examine only one person as a test case. However, where the work of different individuals with the same title varies, all such employees should be examined and individual rulings made.

Held on merits: party chiefs were supervisory to survey crews, and were excluded under Act.

Despite centralized personnel administration and small size of crews, party chiefs had day-to-day responsibility for three-man crews as far as work assignments, and were responsible for problems as they arose. Crews were further supervised by field supervisor, who supervised three or four crews and was not on the job at all times, but party chiefs were supervisors in the field. Party chiefs did not hire, but did performance evaluations, helped train, granted casual time off and kept attendance records. Therefore, they were supervisory employees.

Party chiefs did handle discipline by passing grievances along to head office, but this was not "dealing formally" with grievance as required by s. 1(1)(iv) of Act, as they were mere conduits and no exercise of authority or independent discretion was involved.

UNION: O.P.S.E.U.

EMPLOYER: Crown in Right of Ontario

INDIVIDUAL COMPLAINANT: --

TYPE OF APPLICATION/COMPLAINT: Bargaining Authority

DECISION DATE: May 17/82

PANEL: O.B. Shime
J.H. McGivney
E. McIntyre

SUMMARY

BARGAINING RIGHTS - Tribunal's role and board of arbitration's role-
Test for whether proposals are within scope of collective bargaining -
Sections 7 and 18

BARGAINING RIGHTS - Effect of employer's voluntary agreement to
provision dealing with prohibited area for bargaining - Whether estopped
from relying on Act

BARGAINING RIGHTS - Union's right to bargain on behalf of unclassified
employees

BARGAINING RIGHTS - Union's rights to bargain on behalf of retired
employees

BENEFITS - Bargaining proposal to provide pro-rata benefits for
unclassified employees allowed

BENEFITS - Union's rights to bargain on behalf of retired employees

HEALTH AND SAFETY - Bargaining proposal requiring information to be
provided to women, and consequences of refusal to work, allowed - Sections
7 and 18

HEALTH AND SAFETY - Bargaining proposal to prohibit certain employees from working alone allowed - Sections 7 and 18

JOB EVALUATION - Bargaining proposal to forbid machine monitoring disallowed - Sections 7 and 18

JURISDICTION OF BOARD OF ARBITRATION - Bargaining authority - Effect on Tribunal of board of arbitration decision on bargaining authority

JURISDICTION OF TRIBUNAL - Bargaining authority - Effect on Tribunal of board of arbitration decision on bargaining authority

LAYOFF - Bargaining proposal that employees be retrained rather than laid off allowed - Sections 7 and 18

PROBATIONARY PERIOD - Bargaining proposal to reduce length of probationary period disallowed - Section 18

RETIREMENT - Union's rights to bargain on behalf of retired employees

SCHEDULING - Bargaining proposal to prohibit certain employees from working alone allowed - Sections 7 and 18

SUPERANNUATION - Bargaining proposals dealing with pensions disallowed - Section 18

TRAINING - Bargaining proposal that employees be retrained rather than laid off allowed - Sections 7 and 18

TRAINING - Bargaining proposal that employees be trained on V.D.T.'s on basis of seniority disallowed - Sections 7 and 18

UNCLASSIFIED EMPLOYEES - Bargaining proposal to provide pro-rata benefits for unclassified employees allowed

VIDEO DISPLAY TERMINALS - Bargaining proposal regarding design of rooms allowed - Sections 7 and 18

VIDEO DISPLAY TERMINALS - Bargaining proposal requiring information to be provided to women, and consequences of refusal to work, allowed - Sections 7 and 18

VIDEO DISPLAY TERMINALS - Bargaining proposal that employees be trained on basis of seniority disallowed - Sections 7 and 18

SECTION 7 - Bargaining rights - Tribunal's role - Test for whether proposals are within the scope of collective bargaining - Sections 7 and 18

SECTION 18 - Bargaining rights - Tribunal's role - Test for whether proposals are within the scope of collective bargaining - Sections 7 and 18

Where bargaining proposals might be interpreted to fall under both s. 7, governing bargainable matters, and s. 18, governing management rights, proper approach is to determine the basic nature and effect of the proposal and see which section it falls within. A proposal that falls within s. 7 will be bargainable notwithstanding that it also touches on s. 18; but if it falls within s. 18 it will not be bargainable, even though it may touch upon matters under s. 7.

Tribunal may screen the proposals and made decisions on the basis of brief submissions before they are submitted to a board of arbitration. If upon fuller hearing at the board it becomes apparent at the hearing that the proposal is not bona fide or is an attempt to circumvent the act, the board should disallow the proposal or refer it back to the Tribunal.

Fact that employer had previously agreed to a provision dealing with a prohibited area of bargaining did not estop the employer from invoking the statutory prohibition in response to a subsequent bargaining proposal.

Proposal that employees who would otherwise be laid off must be retrained for one year at employer's expense was allowed. Although concept of retraining was included in "training and development" under s.18, nature and thrust of proposal was to enhance job security.

Proposal that employees working on equipment could not have their performance monitored by the equipment itself was prohibited. In the absence of explanation from the union, the proposal appeared to be directed towards evaluation or appraisal, which was not a permissible area for bargaining.

Proposal regarding the design of rooms with V.D.T. equipment was allowed, as it did not infringe employer's rights to determine location of equipment and the proposal simply dealt with working environment.

Proposal dealing with information to be provided to women working on V.D.T. equipment and the consequences of women's refusal to work on the equipment was allowed as its thrust was safety and job security, and it touched on but did not impede the employer's right to assign work.

Requirement that employer train employees on new V.D.T. equipment on the basis of seniority interfered with employer's right to determine training and development under s. 18, as it sought to compel training rather than simply seeking preferential treatment for affected senior employees.

Proposal to change probationary period from one year to three months interfered with discretion of Civil Service Commission under s. 6(2) of the Public Service Act, which extends to both appointment and the duration of the appointment. It also infringed on the employer's s. 18 right to determine "employment".

Proposal that all unclassified staff be provided with pro-rated benefits on the basis of the number of hours worked did not infringe Act or Public Service Act on its face. Nothing restricted union from bargaining about the terms and conditions of employment during an unclassified employee's statutory period of service.

Proposal that employees in mental retardation, psychiatric and correctional facilities not be required to work alone touched on employer's right to determine complement but did not infringe that right. Proposal dealt with safety and was permissible.

Union had submitted a number of pension proposals. These fell within meaning of "superannuation" in s. 18 and were disallowed.

Final proposals were to provide dental benefits to retirees and to increase Long Term Income Protection for retirees. Board of arbitration had held that benefits for retirees could be bargained, even though retirees were not members of the bargaining unit nor employees under the Act. But Tribunal is not bound by decisions of interest arbitrators where parties have voluntarily attorned to the board's jurisdiction. In general, policy of Act is to provide a narrower focus for bargaining than in the private sector, particularly in the parties' freedom to voluntarily extend recognition beyond the bargaining unit as originally determined. Legislature has provided its own statutory scheme to deal with retirees. Act did not permit extension of rights to retirees who are not employees or members of the bargaining unit, and doing so would upset the Act's balance of intricacies. Although Divisional Court upheld the arbitration award permitting negotiation on behalf of retirees, court did not fully consider legislative scheme and distinctions between public and private sector bargaining. Improvements for retirees were to be made through legislation, not through bargaining or arbitration. Proposals were disallowed. Bargaining for retirement benefits for current employees would be permissible, however.

UNION: O.P.S.E.U.

EMPLOYER: Crown in Right of Ontario

INDIVIDUAL COMPLAINANT: --

TYPE OF APPLICATION/COMPLAINT: Bargaining Authority

DECISION DATE: July 28/82

PANEL: O.B. Shime
J.H. McGivney
E. McIntyre

SUMMARY

LAYOFF - Termination of appointment - Unclassified employees - Bumping, seniority rights

UNCLASSIFIED EMPLOYEES - Union's right to bargain on appointments and reappointments

Union's bargaining proposal to allow employees whose appointments terminated under the Public Service Act to utilize their seniority to bump into jobs held by unclassified employees was disallowed. Seniority cannot be applied to extend the period of appointment beyond that in the Public Service Act.

However, bargaining concerning reappointment of employees before expiry of the initial term of appointment was allowable, subject to the discretion of the minister or his designee to determine the length of the reappointment period. As in the case of an appointment, an unclassified employee could not utilize seniority to extend the period of reappointment.



UNION: O.P.S.E.U.

EMPLOYER: Crown in Right of Ontario

INDIVIDUAL COMPLAINANT: --

TYPE OF APPLICATION/COMPLAINT: Bargaining Authority

DECISION DATE: Nov. 16/83

PANEL: O.B. Shime
J.H. McGivney
E. McIntyre

SUMMARY

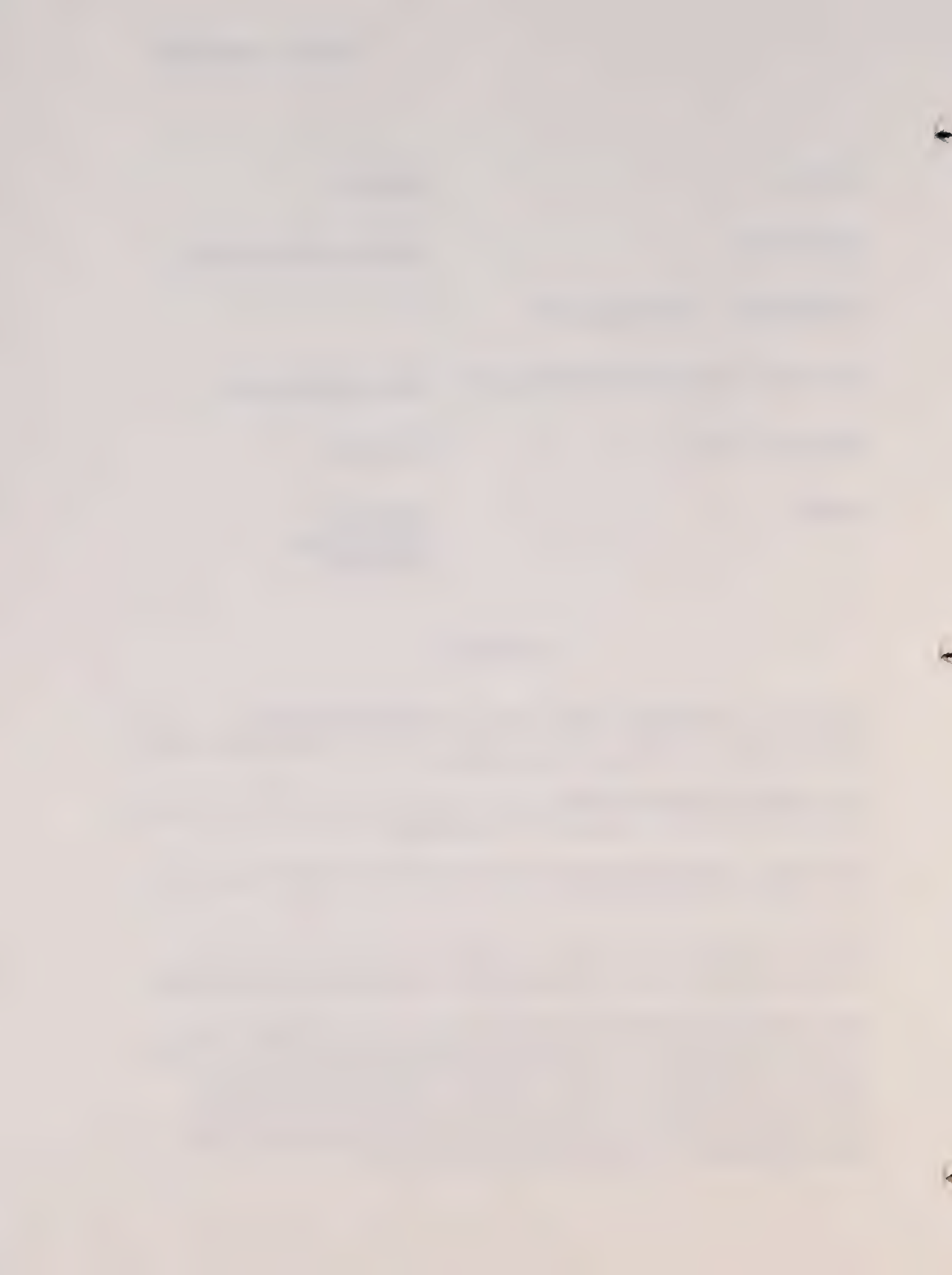
LAYOFF - Termination of appointment - Unclassified employees - Bumping, seniority rights - Union's right to bargain on appointments and reappointments - Meaning of "reappointment"

UNCLASSIFIED EMPLOYEES - Union's right to bargain on appointments and reappointments - Meaning of "reappointment"

SECTION 7 - Union's right to bargain on appointments and reappointments - Meaning of "reappointment"

Employer sought reconsideration of decision regarding reappointments, especially meaning of term "reappointment" [T/0032/81-4, dated July 28/82].

Held: earlier decision affirmed. Section 7 allows union to bargain about "layoffs or reappointments" without interfering with employer's s. 18 rights to determine "appointment". Section 8(1) of Public Service Act, giving Minister or designee the power to appoint a person to the unclassified service, was an extension of the employer's s. 18 authority and need not create difficulties in bargaining the issue. Minister's discretion did not exclude issue from the scope of collective bargaining,



and there was no repugnancy between these powers and union's right to bargain about reappointment under s. 7.

Term "reappointment" was not equivalent of "recall", and was broad enough to include "subsequent appointment" as used in s. 8 of the Public Service Act.

UNION: O.P.S.E.U.

EMPLOYER: Management Board of Cabinet

INDIVIDUAL COMPLAINANT: M. Blythe et al.

TYPE OF APPLICATION/COMPLAINT: Employee Status

DECISION DATE: Feb. 3/84

PANEL: O.B. Shime
W. Walsh
L. Binder

SUMMARY

EMPLOYEE STATUS - Seasonal tree planters/handlers - Whether excluded as temporary or casual employees - Whether working on a recurrent basis - Section 1(1)(f)(vi)

SECTION 1(1)(f)(vi) - Employee status of seasonal tree planters/handlers - Whether excluded as temporary or casual employees - Whether working on a recurrent basis

Workers were seasonally employed for two to eight weeks each year to perform tree planting/handling and related duties. Many workers returned each year. Question was whether they were excluded from employee status under s. 1(1)(f)(vi) of Act. Union claimed they were full-time employees who worked on a recurring basis. Employer claimed they were temporary or casual employees and should be excluded.

Held: workers were employees within the Act.

Based on arbitration decision, persons who work more than 13 hours per week, and persons who work less than 13 hours per week on a regular and continuing basis, are included in bargaining unit.

The work hours of these seasonal employees should be compared to persons "performing similar work", under s. 1(1)(f)(vi). However, comparison with a group who simply receives the same rate of pay was not sufficient. In absence of evidence of circumstances of manual workers, the comparison group suggested by employer, Tribunal was not prepared to exclude these employees under the Act.

UNION: **Ontario Liquor Boards
Employees' Union**

EMPLOYER: **--**

INDIVIDUAL COMPLAINANT: **R. Evans**

TYPE OF APPLICATION/COMPLAINT: **Duty of Fair Representation**

DECISION DATE: **Feb. 17/84**

PANEL: **O.B. Shime
E.C. Witthames
W.G. Wright**

SUMMARY

DUTY OF FAIR REPRESENTATION - Refusal to represent grievor - Union acting on legal opinion- Action not arbitrary

Complainant was dismissed from employment. Union refused to represent him in a grievance after receiving a legal opinion that he had virtually no chance of succeeding, but union did advise him he could retain his own representative or appear on his own behalf.

Held: complaint dismissed.

There was no suggestion of bad faith or discrimination; only issue was whether union acted arbitrarily. Here, union assessed grievor's position and then decided to withdraw its support, with the support of a legal opinion. Union's conduct was reasonable and not arbitrary.

UNION: C.U.P.E. Local 767, Ontario
Housing Corporation
Employees Union

EMPLOYER: Ontario Housing Corporation

INDIVIDUAL COMPLAINANT: B. Williams et al.

TYPE OF APPLICATION/COMPLAINT: Termination

DECISION DATE: Jan. 23/84

PANEL: O.B. Shime
C. Jecchinis
J.H. McGivney

SUMMARY

DECERTIFICATION - Propriety of statements - Principles - Whether compromising voluntariness of employees' signatures

PROCEDURE - Relevance of O.L.R.B. jurisprudence - Decertification

Applicants sought to decertify respondent union. Applicants' statement of desire contained a number of signatures that were duplicated on respondent's counter petition. Excluding overlap, applicants had the support of less than a majority of employees in the bargaining unit. Issue was whether statements made by the groups were improper and had affected the documents.

Held: vote ordered. O.L.R.B. cases were of assistance but were not binding on Tribunal, given the differences between the public and private sectors.

Employees had been subjected to a great deal of propaganda, with some distortions, hyperbole, innuendo and interpretations. Effect of this propaganda from both sides was difficult to assess.

While statements by managers may have more effect than statements by employees, statements by union officials also may be greater than usual influence and may be measured by a higher standard than statements by ordinary employees.

The kinds of statements made are also of concern, especially where there are threats of violence, economic harm or reprisals that may make it impossible for the Tribunal to conclude the employees' voluntary wishes have been expressed.

Here, respondent union's president sent a letter to employees suggesting they would lose their jobs if the rival group gained power. A later letter threatened serious economic reprisals if the termination applications succeeded. These were very serious threats that could greatly influence the voluntariness of employees' signatures. Suggestion to employees that they consult their own lawyers did not obviate the letters' effect.

Where such serious threats were made by a union official perceived as knowledgeable, they would likely have a serious impact that might compromise the voluntariness of their signatures on union's counter petition. Accordingly, Tribunal would not give counter petition any weight.

Applicants' statements were made by former union official who hoped to become president of a new union representing the bargaining unit. Thus, his status was also that of a union official whose statements were subject to the higher standard of scrutiny. His statements omitted some information, such as the fact there might be a time gap between decertification of respondent and certification of new union during which no collective agreement would be in force. However, decertification was the primary emphasis here and there were limits on information required on other, although related, issues such as certification of a new union. Tribunal was not prepared to say this made employees' signatures involuntary. Furthermore, one letter by applicants was merely a response to union's letter so again did not derogate from voluntariness of signatures.

Given that applicants had majority support on the face of their statement of desire, a vote was ordered.

UNION: O.P.S.E.U.

EMPLOYER: Ministry of Health

INDIVIDUAL COMPLAINANT: --

TYPE OF APPLICATION/COMPLAINT: Unfair Labour Practice

DECISION DATE: Sept. 10/85

PANEL: O.B. Shime
E.C. Witthames
J.H. McGivney

SUMMARY

INTERFERENCE WITH WITNESSES - Employer threatening to discipline employees who wouldn't cooperate in investigation of arbitration case - No improper motive to prevent employees from participating in hearing - Section 37

INTIMIDATION - Employer threatening to discipline employees who wouldn't cooperate in investigation of arbitration case - No improper motive to prevent employees from participating in hearing - Section 37

UNFAIR LABOUR PRACTICE - Employer threatening to discipline employees who wouldn't cooperate in investigation of arbitration case - No improper motive to prevent employees from participating in hearing - Section 37

SECTION 37 - Employer threatening to discipline employees who wouldn't cooperate in investigation of arbitration case - No improper motive to prevent employees from participating in hearing

Two employees were asked to answer questions related to an upcoming grievance by a former probationary employee. The employees refused to answer questions. They were then subpoenaed by grievor to testify on her behalf, to employer's knowledge.

After being told by one or more managers that they could be disciplined for refusing to cooperate, they answered employer's questions. They claimed breach of ss. 37(1)(b) and (d) of Act, alleging threats and intimidation because they planned to testify on grievor's behalf.

Held: complaint dismissed. Section 37 of Act required that acts complained of arose "because" the person was going to participate in a proceeding. But here, employer's threat of discipline was made to try to gain information from employees about the circumstances surrounding the grievor's termination, not because employer thought they might testify or participate in a proceeding. It was their refusal to cooperate by conveying information that triggered the references to discipline, not the fact they were going to be witnesses. There were no attempts to deter the employees from participating in the arbitration proceedings, and the motivation required under s. 37 to find a violation of the Act simply was not present.

UNION: C.U.P.E. Local 1750

EMPLOYER: Workers' Compensation Board

INDIVIDUAL COMPLAINANT: R. Romain

TYPE OF APPLICATION/COMPLAINT: Employee Status

DECISION DATE: Aug. 9/84

PANEL: O.B. Shime
E.C. Witthames
J.H. McGivney

SUMMARY

BARGAINING UNIT - Security officer and Safety Security Officer -
Exclusion from bargaining unit under s. 1(1)(l)(viii)

EMPLOYEE STATUS - Security officer and Safety Security Officer-
Exclusion from bargaining unit under s. 1(1)(l)(viii)

SECTION 1(1)(l)(viii) - Security officer and Safety Security Officer- Exclusion
from bargaining unit under s. 1(1)(l)(viii)

Security Officer was held to be an employee under the Act. However, his duties and responsibilities placed him in an apparent conflict of interest with other employees. This was an exceptional circumstance justifying an order that he not be included in the bargaining unit, subject to s. 1(1)(l)(viii). Security Officer could be represented by a separate employee organization composed of security officers, however.

Safety Security Officers were employees under the Act, but their duties were qualitatively and quantitatively different from Security Officer's, and there was no need to exclude them from the bargaining unit.

UNION: O.P.S.E.U.

EMPLOYER: Management Board of Cabinet
and Ministry of Citizenship
and Culture

INDIVIDUAL COMPLAINANT: N.R. Cole et al.

TYPE OF APPLICATION/COMPLAINT: Employee Status

DECISION DATE: Dec. 13/84

PANEL: O.B. Shime
W. Walsh
L. Binder

SUMMARY

EMPLOYEE STATUS - University students working weekends - Not employed during "regular vacation period" - Section 1(1)(f)

STUDENTS - Employee status - University students working weekends - Not employed during "regular vacation period" - Section 1(1)(f)

VACATION - Employee status of students - University students working weekends - Not employed during "regular vacation period" - Section 1(1)(f)

SECTION 1(1)(f) - Employee status of students - University students working weekends - Not employed during "regular vacation period"

Application regarding employee status of university students who worked throughout the year as weekend hosts, and sometimes worked during the week when regular employees were not on duty.

Held: students were employees for purposes of Act.

Students were not within exception in s. 1(1)(f) for students employed during their regular vacation period, as employment on weekends was not employment during a regular vacation period. Even though there were no classes on weekends, school activities were not suspended so students could not be said to be on "vacation".

UNION: O.P.S.E.U.

EMPLOYER: Ministry of Community and Social Services and Frank Drea

INDIVIDUAL COMPLAINANT: --

TYPE OF APPLICATION/COMPLAINT: Unfair Labour Practice

DECISION DATE: August 31/84

PANEL: O.B. Shime
E.C. Witthames
J.H. McGivney

SUMMARY

INTIMIDATION - Minister publicly threatening not to comply with G.S.B. decision reinstating grievor - Intimidation, coercion and threats - Sections 29(2)(c) and 29(3)

REMEDY - Section 19 implementation of G.S.B. award - Whether failure to pursue s. 19 rights bars unfair labour practice complaint under s. 29 - Remedies alternative, choice up to party

UNFAIR LABOUR PRACTICE - Intimidation, coercion and threats - Minister publicly threatening not to comply with G.S.B. decision reinstating grievor - Sections 29(2)(c) and 29(3)

SECTION 19 - Right to pursue implementation of G.S.B. award - Whether failure to pursue s. 19 rights bars unfair labour practice complaint under s. 29 - Remedies alternative, choice up to party

SECTION 29(2)(C) - Minister publicly threatening not to comply with G.S.B. decision reinstating grievor - Intimidation, coercion and threats



SECTION 29(3) - Minister publicly threatening not to comply with G.S.B. decision reinstating grievor - Intimidation, coercion and threats

After a union member was reinstated by the Grievance Settlement Board, the Minister made public comments to the press threatening to demote the grievor until he quit or a second grievance was provoked, so that the employer could try again to have him fired. The union claimed a violation of ss. 19 and 29 due to coercion, intimidation and threats regarding the grievor's exercise of his rights under the Act.

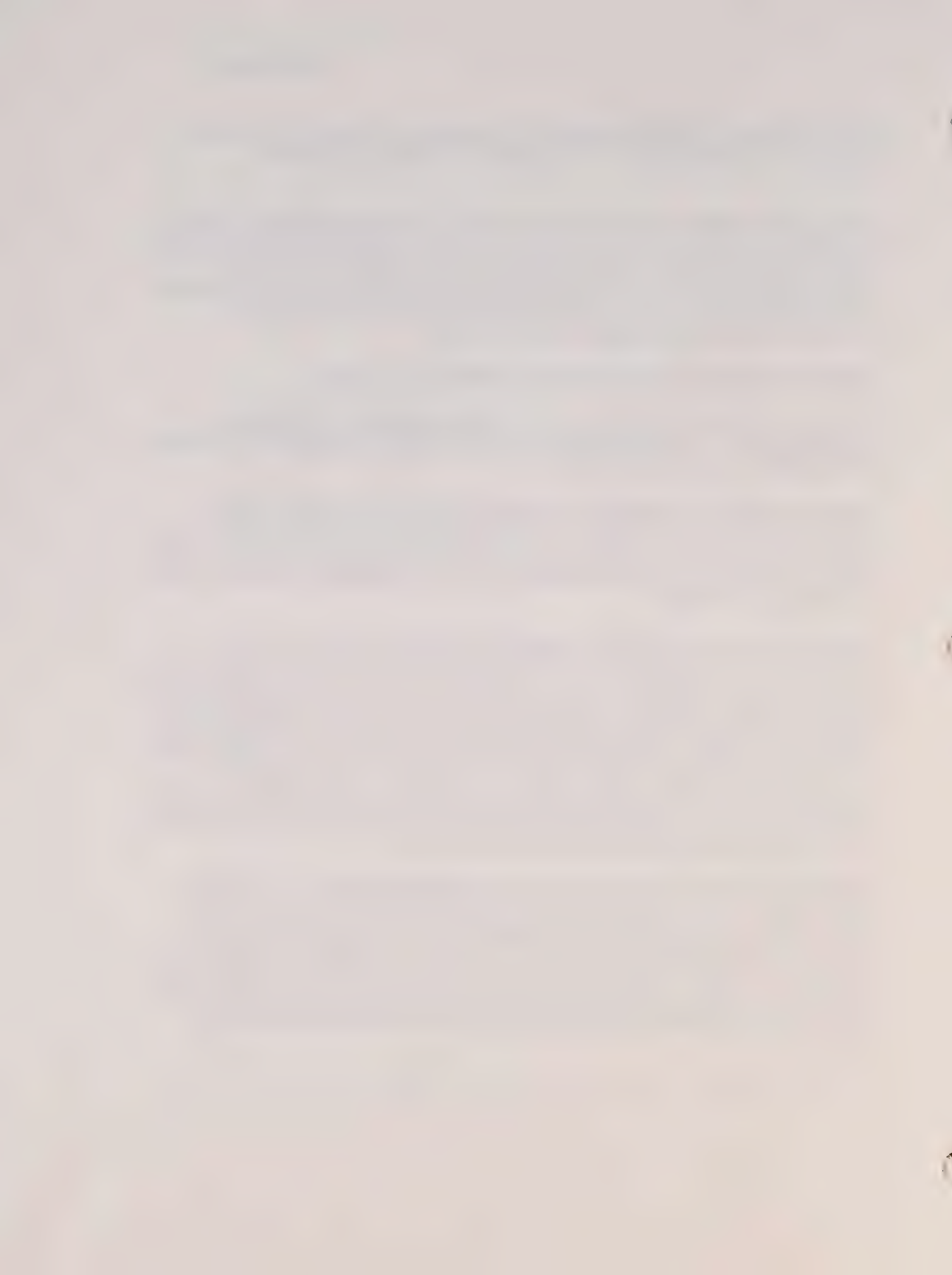
Held: employer and Minister violated ss. 29(2)(c) and 29(3).

Minister is subject to rule of law and to Crown Employees Collective Bargaining Act. Outside the legislature, his right of free speech is subject to the restraints imposed by the Act.

Given the history of compliance with the G.S.B.'s orders, there was no interference with union's right to represent employees under 2. 29(1), nor do the remarks affect the right to an impartial hearing by the G.S.B., as the G.S.B. is not immune from criticism, nor are the Minister's remarks likely to influence its decision.

Remarks threatening firing or demotion suggest adverse economic consequences and amount to intimidation, coercion or threats within the labour relations meaning. If they are intended to make an employee refrain from exercising his rights, they are prohibited by the Act. Here, suggestion that employer would not comply with the G.S.B.'s order in substance is a breach of ss. 29(2)(c) and 29(3). They were calculated to have a chilling effect on the grievor's pursuit of his remedy to have the G.S.B.'s decision implemented. No anti-union motive must be proved, as it is inherent in the words used, which are so inherently destructive of the grievor's rights that the Minister must have intended the consequences.

Although the grievor could have pursued implementation of the G.S.B. order under s. 19, it is an alternative remedy and the choice is up to the parties. A party is not compelled to pursue a s. 19 remedy rather than complain of an unfair labour practice. But since the G.S.B. remedy had not yet been finalized, it would have been better here to wait and seek to enforce the G.S.B. decision. Because of this, the Tribunal merely granted a simple declaration of violation and a direction to cease and desist from similar conduct.



UNION: O.P.S.E.U.

EMPLOYER: Ministry of Community and Social Services

INDIVIDUAL COMPLAINANT: Rose Marie MacLean

TYPE OF APPLICATION/COMPLAINT: Religious Objection

DECISION DATE: Dec. 18/85

PANEL: O.B. Shime
B. Walsh
L. Binder

SUMMARY

RELIGIOUS OBJECTION - Roman Catholic disagreeing with union's pro-choice stance on abortion - Partial exemption allowed - Section 16

SECTION 16(2) - Partial exemption from union dues - Roman Catholic disagreeing with union's pro-choice stance on abortion - Partial exemption allowed

Applicant, a deeply religious Roman Catholic, sought relief from paying union dues because her union had adopted pro-choice resolution on abortion. Applicant had previously been a union member and a union steward, but withdrew as an active member when she learned of the abortion resolution.

Held: partial exemption from union dues allowed.

Intention of s. 16 is not to suppress unions from expressing social or political views on which labour has a legitimate interest. But the broadening of activities broadened the chance for the majority to suppress the views of the minority. An employee with strong convictions should not be compelled to subsidize ideology which conflicts with her religious beliefs.

Section 16 allows relief from part of union dues, without withdrawing support for collective bargaining activities that directly benefit the employee. Applicant here does not object to trade unions or collective bargaining per se, only to the ideological activity. Tribunal therefore ordered that applicant be relieved from the proportion of her dues corresponding to the proportion of the union's expenditures related to its pro-choice position. The amounts deducted were to be remitted to a charity, to be mutually agreed upon by the parties.

UNION: O.P.S.E.U.

EMPLOYER: Ministry of Community and Social Services

INDIVIDUAL COMPLAINANT: Rose Marie MacLean

TYPE OF APPLICATION/COMPLAINT: Religious Objection;
Supplementary

DECISION DATE: July 25/86

PANEL: O.B. Shime
B. Walsh
L. Binder

SUMMARY

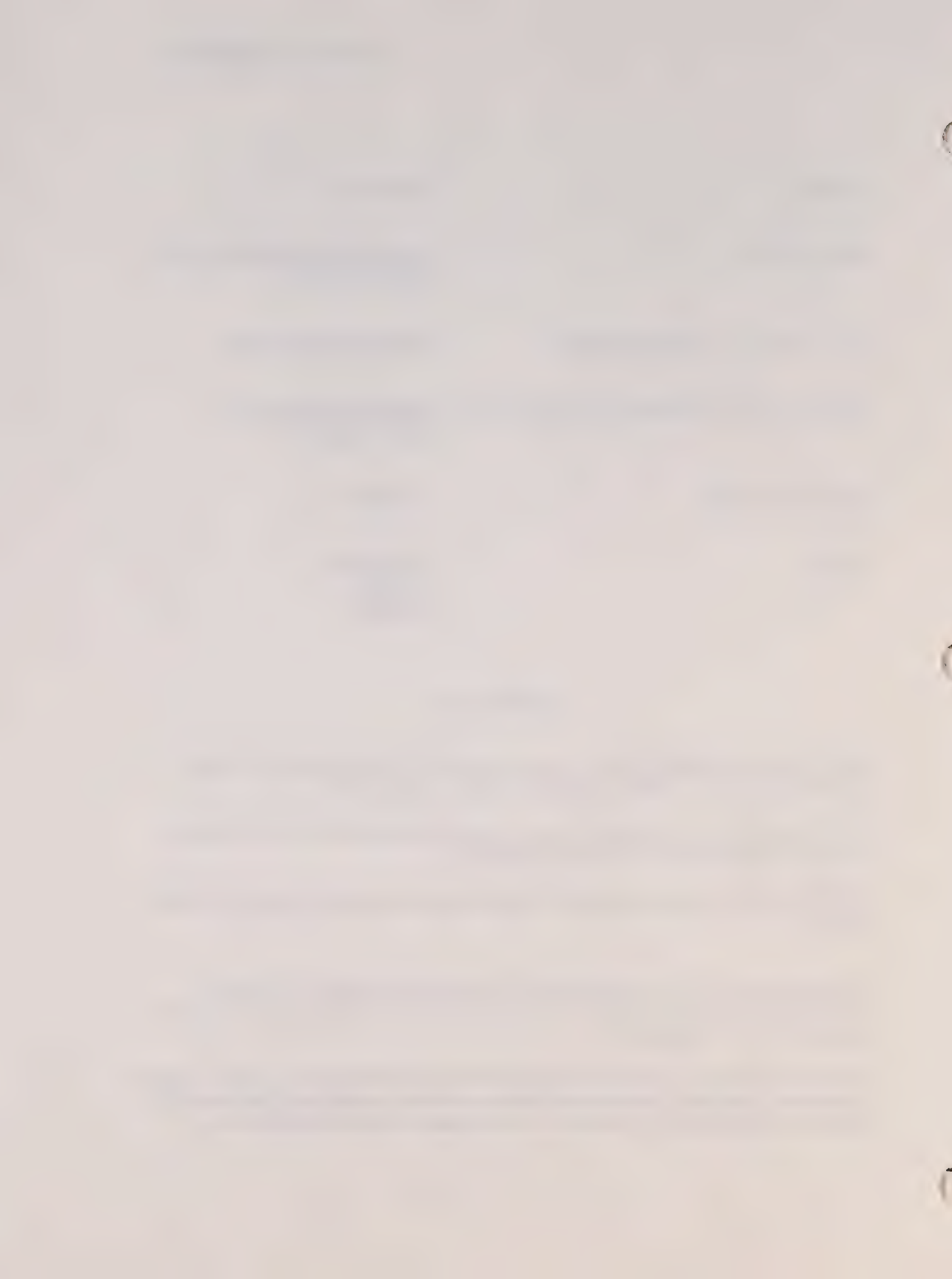
RELIGIOUS OBJECTION - Reconsideration of partial exemption from union dues sought - Effect of Forer decision - Section 39

SECTION 16(2) - Reconsideration of partial exemption from union dues sought - Effect of Forer decision - Section 39

SECTION 39 - Reconsideration - Factors making it not advisable to change decision

Complainant sought reconsideration of partial exemption ordered in T/0014/84-1, after full exemption was granted based on a similar religious objection in the Forer case.

Held: the kind and quality of submissions here differed from those in Forer. Extensive, thoughtful arguments were made and considered here and it would not be "advisable" within s. 39 to depart from earlier decision.



UNION: O.P.S.E.U.

EMPLOYER: Crown in Right of Ontario

INDIVIDUAL COMPLAINANT: --

TYPE OF APPLICATION/COMPLAINT: Bargaining Authority

DECISION DATE: Oct. 4/84

PANEL: O.B. Shime
J.H. McGivney
E.C. Witthames

SUMMARY

BARGAINING RIGHTS - Bargaining proposal that work plans and copies of studies affecting organization be provided to union remitted to union for redrafting - Sections 7 and 18

BARGAINING RIGHTS - Tribunal's role - Test for whether bargaining proposals are within the scope of collective bargaining - Sections 7 and 18

CONTRACTING OUT - Bargaining proposal to forbid contracting out allowed only to extent it sought to avoid layoffs - Sections 7 and 18

HEALTH AND SAFETY - Bargaining proposal to ban certain employees from working alone allowed.- Sections 7 and 18

HEALTH AND SAFETY - Bargaining proposal to increase testing and provide adjustable furniture for VDT users allowed - Sections 7 and 18

HOURS OF WORK - Bargaining proposal that employees be allowed to choose between work start and finish times allowed - Sections 7 and 18

1. The first part of the paper is devoted to a general discussion of the problem of the origin of the universe. It is shown that the problem is not only a philosophical one, but also a scientific one. The scientific part of the problem is the question of the origin of the matter and energy of the universe.

2. The second part of the paper is devoted to a discussion of the problem of the origin of life. It is shown that the problem is not only a philosophical one, but also a scientific one. The scientific part of the problem is the question of the origin of the organic matter of life.

3. The third part of the paper is devoted to a discussion of the problem of the origin of the human race. It is shown that the problem is not only a philosophical one, but also a scientific one. The scientific part of the problem is the question of the origin of the human species.

4. The fourth part of the paper is devoted to a discussion of the problem of the origin of the human mind. It is shown that the problem is not only a philosophical one, but also a scientific one. The scientific part of the problem is the question of the origin of the human consciousness.

5. The fifth part of the paper is devoted to a discussion of the problem of the origin of the human culture. It is shown that the problem is not only a philosophical one, but also a scientific one. The scientific part of the problem is the question of the origin of the human civilization.

6. The sixth part of the paper is devoted to a discussion of the problem of the origin of the human society. It is shown that the problem is not only a philosophical one, but also a scientific one. The scientific part of the problem is the question of the origin of the human community.

7. The seventh part of the paper is devoted to a discussion of the problem of the origin of the human world. It is shown that the problem is not only a philosophical one, but also a scientific one. The scientific part of the problem is the question of the origin of the human environment.

JOINT COMMITTEE - Bargaining proposal to set up joint study of pre- and post-retirement matters - Allowed on basis that "post-retirement" referred to current employees only - Sections 7 and 18

JOINT COMMITTEE - Bargaining proposal for joint committee to allocate funds and assign training disallowed - Sections 7 and 18

JOINT COMMITTEE - Bargaining proposal to deal with sexual harassment through joint action committee allowed to extent it didn't infringe employer's right to discipline - Sections 7 and 18

RETIREMENT - Bargaining proposal to set up joint study of pre- and post-retirement matters - Allowed on basis that "post-retirement" referred to current employees only - Sections 7 and 18

SCHEDULING - Bargaining proposal to ban certain employees from working alone allowed on basis of safety concerns - Sections 7 and 18

SCHEDULING - Bargaining proposal to improve staffing "where security demands it" allowed - Sections 7 and 18

SEXUAL HARASSMENT - Bargaining proposal to deal with sexual harassment through joint action committee allowed to extent it didn't infringe employer's right to discipline - Sections 7 and 18

SHIFT SCHEDULING - Bargaining proposal regarding shift assignments with mutual agreement allowed on limited basis - Sections 7 and 18

SUPERANNUATION - Bargaining proposal to make superannuation negotiable disallowed - Section 18(1)(b)

TRAINING - Bargaining proposal to retrain employees to avoid layoffs allowable - Sections 7 and 18

TRAINING - Bargaining proposal for "no minimum training to reach machine production specifications" - Proposal remitted for redrafting - Sections 7 and 18

TRAINING - Bargaining proposal for joint committee to allocate funds and assign training disallowed - Sections 7 and 18

VIDEO DISPLAY TERMINALS - Bargaining proposal to increase testing and provide adjustable furniture for VDT users allowed - Sections 7 and 18

WORK ASSIGNMENT - Bargaining proposal that Deputy Minister be present at meetings disallowed - Sections 7 and 18

1. The first part of the document discusses the importance of maintaining accurate records of all transactions and activities. It emphasizes that this is crucial for ensuring transparency and accountability in the organization's operations.

2. The second part outlines the specific procedures for recording and reporting these activities. It details the steps involved in data collection, analysis, and the subsequent reporting to the relevant stakeholders.

3. The third part addresses the challenges associated with implementing these procedures. It identifies common obstacles such as lack of resources, insufficient training, and resistance to change, and provides strategies to overcome them.

4. The fourth part discusses the role of technology in enhancing the efficiency and accuracy of the recording and reporting process. It highlights the benefits of using specialized software and digital tools.

5. The fifth part focuses on the importance of regular communication and collaboration between different departments and teams. It stresses that this is essential for ensuring that everyone is on the same page and working towards the same goals.

6. The sixth part provides a summary of the key points discussed in the document. It reiterates the importance of accurate record-keeping and the need for continuous improvement in the reporting process.

7. The final part of the document includes a list of references and a bibliography. It cites various sources that have been consulted during the preparation of the document, providing a basis for the information presented.

SECTION 7 - Bargaining rights - Tribunal's role - Test for whether proposals are within the scope of collective bargaining - Sections 7 and 18

SECTION 18 - Bargaining rights - Tribunal's role - Test for whether proposals are within the scope of collective bargaining - Sections 7 and 18

Employer applied under s. 40(2) to determine whether union's bargaining proposals were within the scope of collective bargaining.

Held: some proposals disallowed; others remitted to union for redrafting; some allowed.

The test was to determine the basic nature and effect of a proposal and whether it was more within s. 7 or within s. 18. The Tribunal had power to make that decision. The employer's suggestion that a proposal should be disallowed if there was any difficulty in construing it was rejected.

Proposal to retrain surplus employees to avoid layoffs did not conflict with right to release employees under s. 22(4) of the Public Service Act and was within s. 7, as its main thrust was job security, not training and development.

Proposal to forbid contracting out infringed employer's s. 18 rights to determine organization of workforce, work methods and procedures, and complement. But intention to avoid layoffs was within s. 7 union rights. Since proposal fell equally between the two sections, it was allowable, but only to the extent it sought to avoid layoffs due to contracting out.

Proposal for "new language regarding introduction of technical change" was too imprecise and was remitted to union for redrafting.

Proposal for "no minimum training to reach machine production specifications" appeared to infringe employer's training rights and was remitted to union for redrafting to reflect union's concern about rates of pay.

Proposal to make superannuation negotiable clearly violated s. 18(1)(b) and was disallowed.

Proposal regarding shift assignments with mutual agreement was allowed only on basis of union's assurances its concern was abuse of shift premiums, not shift preferences, which were management right.

Proposal to set up joint study of pre- and post-retirement matters was allowed on basis that "post-retirement" referred to current employees only.

Proposal to ban certain employees from working alone, for safety reason, was allowed.

Proposal to increase testing and provide adjustable furniture for VDT users was allowed, as it did not infringe employer's right to determine the kinds of equipment used.

Proposal to deal with sexual harassment and other matters through a joint action committee was allowed only to the extent it didn't infringe employer's right to discipline. Reference to "other matter" was disallowed as too vague.

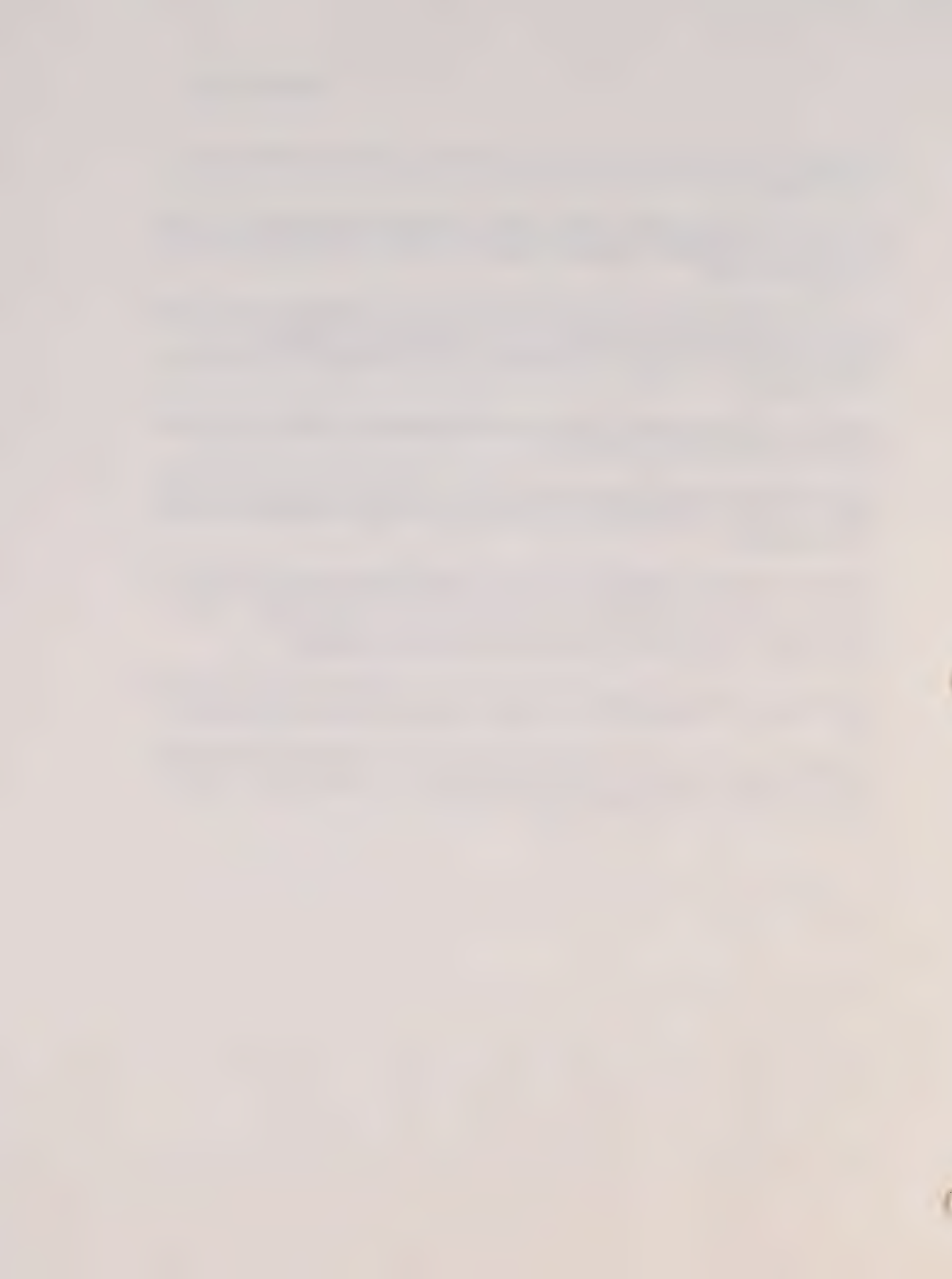
Proposal to improve staffing "where security demands it" dealt with safety, not complement, so was allowable.

Proposal for joint committee to allocate funds and assign training violated employer's right to determine assignments, training and development, and was disallowed.

Proposal that work plans and copies of studies affecting organization be provided to union was too broad and didn't reflect union's concern about closure, and violated employer's right to manage and determine organization. Proposal was remitted to union for redrafting.

Proposal that Deputy Minister be present at meetings infringed employer's right to assign management personnel as it saw fit, and was disallowed.

Proposal that employees be allowed to choose between work start and finish times was allowed insofar as it dealt with hours of work and didn't affect employer's right to determine organization.



UNION: O.P.S.E.U.

EMPLOYER: Crown in Right of Ontario

INDIVIDUAL COMPLAINANT: --

TYPE OF APPLICATION/COMPLAINT: Bargaining Authority;
Supplementary

DECISION DATE: January 28/85

PANEL: O.B. Shime
J.H. McGivney
E.C. Witthames

SUMMARY

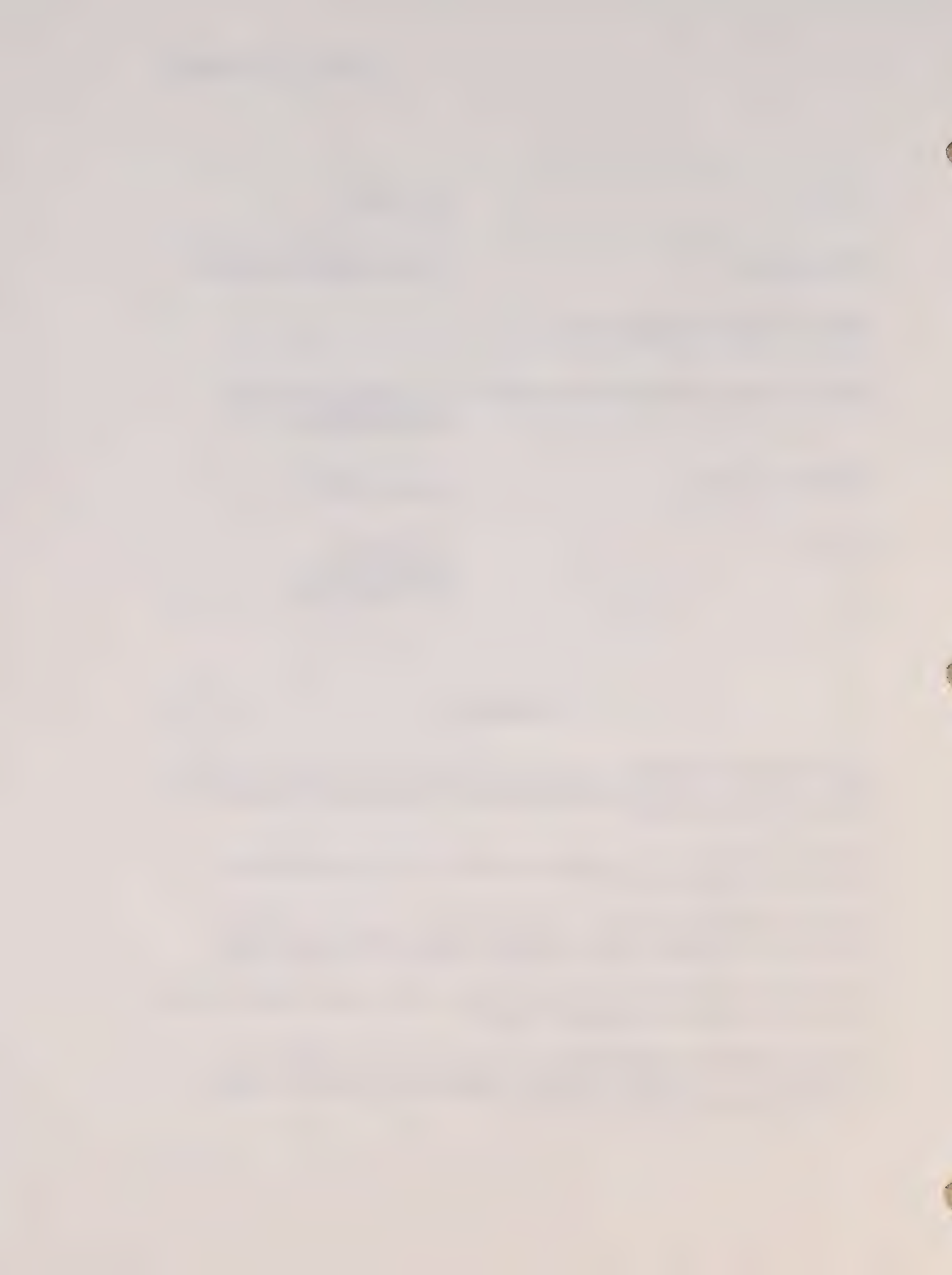
BARGAINING RIGHTS - Interest arbitration submissions - Tribunal's role to determine whether submissions are within scope of collective bargaining - Section 40(2)

CONTRACTING OUT - Bargaining proposal to ban contracting out disallowed - Sections 7 and 18

INTEREST ARBITRATION - Tribunal's role to determine whether submissions are within scope of collective bargaining - Section 40(2)

JOB EVALUATION - Machine monitoring - Bargaining proposal to forbid monitoring disallowed - Sections 7 and 18

JURISDICTION OF TRIBUNAL - Interest arbitration submissions - Tribunal's role to determine whether submissions are within scope of collective bargaining - Section 40(2)



LAYOFF - Bargaining proposal requiring surplus employees be kept on payroll and retrained until vacancy available - Proposal disallowed - Sections 7 and 18

TECHNOLOGICAL CHANGE - Bargaining proposal to give notice of changes that could result in surplus employees allowed - Sections 7 and 18

TRAINING - Bargaining proposal requiring no minimum training period on new machines disallowed - Sections 7 and 18

SECTION 7 - Bargaining proposals - Tribunal's role in determining whether submissions to interest arbitration board were within scope of collective bargaining

SECTION 18 - Bargaining proposals - Tribunal's role in determining whether submissions to interest arbitration board were within scope of collective bargaining

SECTION 40(2) - Bargaining proposals - Tribunal's role in determining whether submissions to interest arbitration board were within scope of collective bargaining

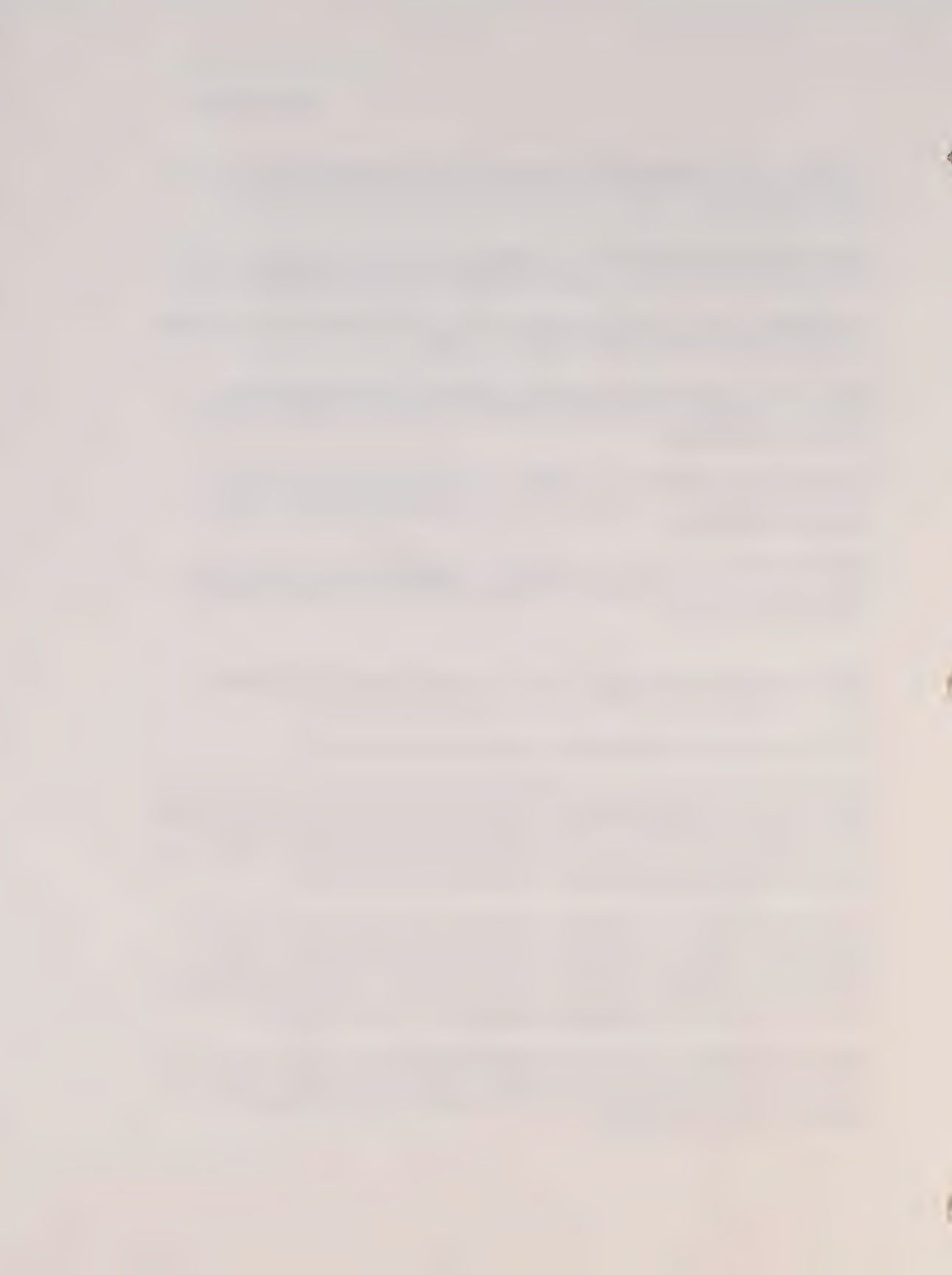
Employer applied to determine whether union's proposals to Interest Arbitration Board came within scope of collective bargaining.

Held: some proposals disallowed; some proposals allowed.

Although an Interest Board of Arbitration can determine whether matters come within the Crown Employees Collective Bargaining Act, the Tribunal has primary responsibility for deciding these matters under s. 40(2). Therefore, the Tribunal could consider whether proposals put before Board were within the scope of collective bargaining under the Act.

Proposal that surplus employees be kept on payroll and retrained until a vacancy arose which the employee could fill was disallowed. Proposal essentially prohibited layoffs and restricted employer's rights under s. 18 to determine complement and organization, and also restricted employer's right under s. 22(4) of the Public Service Act to release employees.

Proposal forbidding contracting out infringed employer's s. 18 rights to determine organization, work methods and procedures. As proposal was not limited to mitigating the effects of contracting out on existing employees, it was disallowed.



Proposal that employer provide six months' notice of the introduction of any technological changes that could result in employees becoming surplus was allowed, as it did not interfere with employer's authority over work methods.

Proposal requiring no minimum training period on new machines infringed employer's right to control training, and was disallowed.

Proposal regarding machine monitoring of work affected employer's rights to evaluate and appraise and was disallowed, as it was not a health and safety matter.

UNION: O.P.S.E.U.

EMPLOYER: Ministry of the Solicitor
General

INDIVIDUAL COMPLAINANT: M. Poltajainen

TYPE OF APPLICATION/COMPLAINT: Employee Status; Preliminary

DECISION DATE: November 30/84

PANEL: O.B. Shime
E.C. Witthames
J.H. McGivney

SUMMARY

EMPLOYEE STATUS - Timing of application - Applicant no longer employed - Section 40(1)

PROCEDURE - Employee status application - Timing of application - Applicant no longer employed - Section 40(1)

SECTION 40(1) - Employee status application - Timing of application - Applicant no longer employed - Section 40(1)

Applicant was employed for over 8 months and was treated as a non-bargaining unit employee. She resigned, then sought to withdraw her resignation, and then claimed unjust discharge. The union asserted she was an employee under the Act and it could prosecute a claim on her behalf. Union was not aware earlier how her status was being treated.

On preliminary issue of whether union could now seek a ruling on her status, held: union was entitled to invoke s. 40(1) on applicant's behalf, because if she was an employee, her employment would not terminate until the facts were examined by a

1870-1871

1871-1872

1872-1873

1873-1874

1874-1875

1875-1876

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1882-1883

1883-1884

1884-1885

1885-1886

board of arbitration.

Even though a person has been dismissed, their employee status can continue for the purpose of filing a grievance. Applicant here had conditional status, to enable union to bring an application on her behalf to resolve question of her status.

UNION: **O.P.S.E.U.**

EMPLOYER: **Ministry of the Solicitor
General**

INDIVIDUAL COMPLAINANT: **M. Poltajainen**

TYPE OF APPLICATION/COMPLAINT: **Employee Status**

DECISION DATE: **June 4/85**

PANEL: **O.B. Shime
E.C. Witthames
J.H. McGivney**

SUMMARY

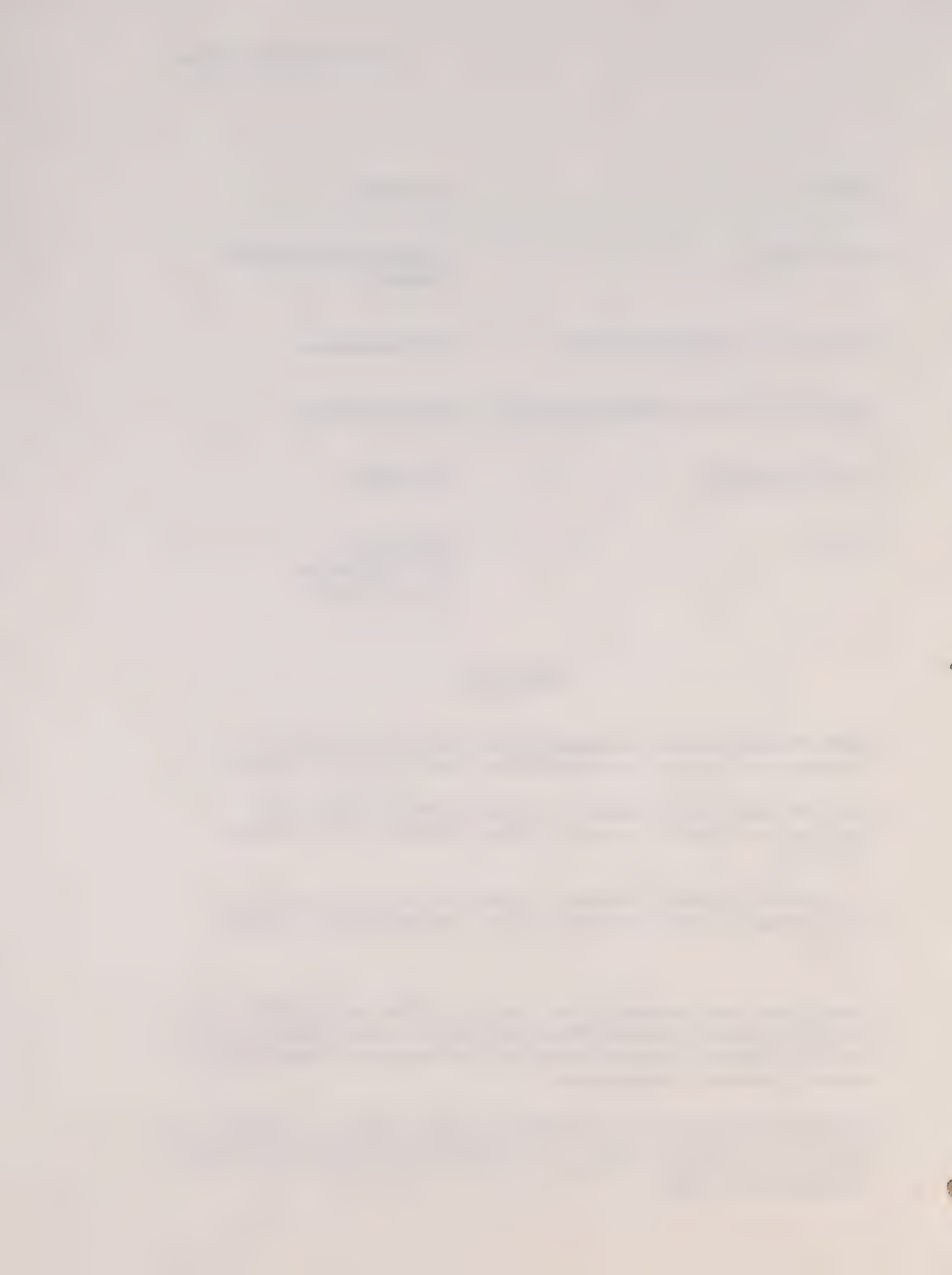
EMPLOYEE STATUS - Secretary to Executive Officer, Office of the Commissioner, Ontario Provincial Police - Sections 1(1)(l)(vi) and (viii)

SECTION 1(1)(l)(vi) - Secretary to Executive Officer, Office of the Commissioner, Ontario Provincial Police - Employee status - Section 1(1)(l)(viii)

SECTION 1(1)(l)(viii) - Secretary to Executive Officer, Office of the Commissioner, Ontario Provincial Police - Employee status - Section 1(1)(l)(vi)

The applicant was secretary to the Executive Officer in the Office of the Commissioner of the Ontario Provincial Police. She also did some work for the O.P.P. Budget Co-ordinator and the Lt.-Governor's Protocol Officer in charge of security for state events.

Applicant's main work was for Executive Officer, who was involved with hiring, discipline, performance appraisals, policy advice, taking minutes of management committee meetings and other highly confidential matter, including some union



negotiations. The applicant maintained files and prevented unauthorized access.

Union argues that although her boss was clearly a managerial employee in a confidential capacity, the applicant performed ordinary secretarial work and merely had access to confidential information, not a role in formulating it.

Held: application dismissed. Applicant typed and maintained confidential executive and financial documents. She was an employee adjunct and integral part of the management team and as such, she was employed in a confidential position and was not an employee under ss. 1(1)(vi) or (viii) of Act.

UNION: C.U.P.E. Local 1750

EMPLOYER: Workers' Compensation Board

INDIVIDUAL COMPLAINANT: --

TYPE OF APPLICATION/COMPLAINT: Bargaining Authority

DECISION DATE: March 22/85

PANEL: O.B. Shime
C. Jecchinis
J.H. McGivney

SUMMARY

BARGAINING RIGHTS - Job evaluation system - Sections 7 and 18

JOB EVALUATION SYSTEM - Bargaining authority - Sections 7 and 18

SECTION 7 - Bargaining authority - Job evaluation system - Section 18

SECTION 18 - Bargaining authority - Job evaluation system - Section 7

Employer claimed union's attempt to bargain on job evaluation system was not a matter for collective bargaining.

Held: application dismissed.

Although Tribunal had denied jurisdiction in the past due to the employer's delay, this application was based on a new round of bargaining and should be dealt with on the merits to further future labour relations between the parties. (See also T/0009/78 and T/0032/81).

Under s. 7, the union can bargain about "the classification and job evaluation system", but under s. 18, the employer has exclusive control over "classification of positions".

Although application of a system may lead to results tantamount to classifying employees, this merely touches on classification and does not offend s. 18. It is primarily negotiation of a system as allowed under s. 7. As long as the nature and effect of the scheme is within s. 7 it does not offend s. 18.

UNION: **C.U.P.E. Local 767 Trusteeship**

EMPLOYER: **Ministry of Housing**

INDIVIDUAL COMPLAINANT: **--**

TYPE OF APPLICATION/COMPLAINT: **Trusteeship**

DECISION DATE: **May 29/86**

PANEL: **P. Picher
W. Walsh
R. Gallivan**

SUMMARY

EMPLOYEE ORGANIZATION - Trustee - Status as an "employee organization" - Support of political party - Section 1(1)(g)(iv)

EMPLOYEE ORGANIZATION - Support of political party - Indirect support - Section 1(1)(g)(iv)

TRUSTEESHIP - Status of trustee as an "employee organization" - Support of political party - Section 1(1)(g)(iv)

SECTION 1(1)(g)(iv) - Status of trustee as an "employee organization" - Support of political party - Indirect support of political party by local union

National union sought to extend its trusteeship over Local 767 for one year, under s. 46(2). Two employees claimed national organization didn't have status to act as trustee, as it wasn't an employee organization under s. 1(1)(g)(iv) because it supported the N.D.P. party. Employees also argued that Local 767 also lacked status because it supported the national organization financially, which in turn supported the N.D.P.

Held: trusteeship application allowed.

Section 46 does not provide that the organization providing trusteeship itself becomes the "employee organization". Local did not lose its status as the employee organization during the national trusteeship, so the national organization's status as an employee organization under s. 1(1)(g)(iv) was irrelevant.

Even if s. 1(1)(g)(iv) covers indirect support of a political party, the evidence did not prove the local supported the N.D.P. There was no evidence that any funds given by the local to the national organization were specifically used to support a political party.

UNION: O.P.S.E.U.

EMPLOYER: Ministry of the Attorney General

INDIVIDUAL COMPLAINANT: --

TYPE OF APPLICATION/COMPLAINT: Employee Status

DECISION DATE: Jun. 24/88

PANEL: P.C. Picher
J.H. McGivney
E.C. Witthames

SUMMARY

EMPLOYEE STATUS - Court clerks, bailiffs and office staff of the Small Claims Court - Whether independent contractors - Application of various tests

EMPLOYEE STATUS - Court Interpreters - Whether independent contractors - Effect of part-time work

EMPLOYEE STATUS - Independent contractors vs. employees - Tests

EMPLOYEE STATUS - Part-time work - Effect

PART-TIME EMPLOYEES - Effect on employee status

Issues were employee status of Small Claims Court clerks, bailiffs and office staff, and of regular and casual court interpreters.

Union claimed clerks, bailiffs and office staff were "crown employees" within *Public Service Act* and therefore were employees under *C.E.C.B. Act.* Employer claimed they were independent contractors or employees of independent contractors and therefore were excluded.

Status of regular (full-time) and casual (part-time) interpreters was determined without regard to the number of hours worked or the possible exclusionary effect of s. 1(1)(f)(vi) on some casual interpreters.

Held: clerks and bailiffs were employees; court office staff were employees; regular and casual interpreters were employees.

In distinguishing between employees and independent contractors, there are six approaches: 1) the control test; 2) the fourfold test; 3) the Whose Business Is It test; 4) the organization test; 5) the statutory test; 6) the Algonquin list. The Tribunal should consider the relationship in issue from several of these angles which seem most applicable to the facts at hand.

Applying these tests to the clerks and bailiffs, they were an integral part of the small claims court system; were subject to close control of the Ministry of the Attorney General by virtue of its many court rules and policies under the *Courts of Justice Act*; they were clearly carrying on the court's business, not their own; and they were employees under many factors of the Algonquin list. Although some clerks and bailiffs in fee courts had a chance of profit and a risk of loss, this was limited due to the nature of the court system. Given the numerous factors pointing to employee status, the clerks and bailiffs in both the fee and salary courts were found to be employees under *C.E.C.B. Act*, not independent contractors.

Court office staff were employees under the Act. Although some of them were hired and had their wages set by the clerks, fundamental control over their work rested with the Ministry. They were no less subject to the Ministry's control than the clerks and bailiffs for whom they worked, and they were employees of the Ministry, not of the clerks.

Regular (full-time) court interpreters were employees, not independent contractors. One group worked exclusively for the Ministry, was required to report a set number of hours each day, and was paid regardless of whether their services were needed. They were subject to the full control of the Ministry. The other group, which offered their services to other clients with the Ministry's permission, also were employees, as the vast bulk of their work was for the Ministry and they were dependent on the Ministry for a major part of their livelihood, which indicated an employee relationship, not an independent contractor. Furthermore, they had to have the Ministry's permission to do work for anyone else, they were paid by the hour rather than by the job, and they were subject to the same control as the first group. They also were an integral part of the court system.

Casual (part-time) interpreters worked on an on-call basis. They also were employees, not independent contractors. Their freedom to accept or reject work was limited, as they would be removed from the list of interpreters if they were not regularly available. They were as limited as the regular interpreters in their ability to exercise independent discretion or control their work. Nothing in their work or how they performed it distinguished them from the regular interpreters for the

purpose of employee status, as part-time work itself did not create an independent contractor relationship. Possible exclusions under s. 1(1)(f)(vi) would have to be determined on an individual basis.

UNION: **O.P.S.E.U.**

EMPLOYER: **Ministry of Health**

INDIVIDUAL COMPLAINANT: **J. Atwood et al.**

TYPE OF APPLICATION/COMPLAINT: **Employee Status**

DECISION DATE: **Sept. 21/87**

PANEL: **J.H. Devlin
M. Sullivan
J.H. McGivney**

SUMMARY

EMPLOYEE STATUS - Ward Supervisors at Penetanguishene Mental Health Centre - Significant managerial duties on overtime shifts and on weekends - Sections 1(1)(l)(iii) and (iv)

SECTION 1(1)(l)(iii) - Ward Supervisors at Penetanguishene Mental Health Centre - Significant managerial duties on overtime shifts and on weekends - Section 1(1)(l)(iv)

SECTION 1(1)(l)(iv) - Ward Supervisors at Penetanguishene Mental Health Centre - Significant managerial duties on overtime shifts and on weekends - Section 1(1)(l)(iii)

Employee status application regarding seven Ward Supervisors at Penetanguishene Mental Health Centre. Ward Supervisors had some supervisory, appraisal and discipline duties, administered some parts of the collective agreement and were responsible for Step 1 of the grievance procedure. They attended management meetings, discussed policy, and helped select and train employees. They were the senior on-site person in charge on weekends. They could impose verbal and written discipline, conduct performance appraisals and grant casual time off. However,

some of their supervisory duties involved making recommendations only.

Held: Ward Supervisors were employed in a managerial capacity within s. 1(1)(l)(iii) of Act.

Ward Supervisors were not employed in a managerial capacity under s. 1(1)(l)(iv) because of their responsibility for Step 1 of the grievance procedure, as none of them had ever actually performed this duty.

Although they exercised little independent discretion during the week, they did exercise significant independent discretion and initiative on the weekends and on overtime shifts during the week. This was sufficiently often that, in combination with their other duties, they were excluded from the definition of "employee" under s. 1(1)(l)(iii).

UNION: O.P.S.E.U.

EMPLOYER: Ministry of Health
(McKechnie Ambulance
Services Inc., Intervenor)

INDIVIDUAL COMPLAINANT: --

TYPE OF APPLICATION/COMPLAINT: Employee Status

DECISION DATE: Nov. 30/89

PANEL: P.C. Picher
K. McDonald
J.H. McGivney

SUMMARY

EMPLOYEE STATUS - Ambulance attendants - Whether employed by independent contractor or crown agency - Tests

EMPLOYEE STATUS - Crown agency - Whether ambulance service independent contractor or crown agency - Tests

EMPLOYEE STATUS - Jurisdiction of Tribunal - Whether crown agency issue res judicata where union certified by O.L.R.B.

JURISDICTION OF TRIBUNAL - Employee status - Whether crown agency issue res judicata where union certified by O.L.R.B.

RES JUDICATA - Employee status - Jurisdiction of Tribunal to consider where union certified by O.L.R.B.

Issue was whether intervenor private ambulance service was a crown agency.

Held: intervenor is a crown agency, therefore ambulance attendants are employees within the Act.

Union had been certified by Ontario Labour Relations Board as collective bargaining agent of ambulance attendants employed by intervenor in 1981. Divisional Court determined issue of crown agency was within Tribunal's jurisdiction and was not res judicata as it was never raised at original certification. Tribunal concluded certification by O.L.R.B. was not a bar to its jurisdiction to determine crown agency status in this case.

Tribunal considered tests for determining status of entity as crown agency or independent contractor and adopted four-fold test of control, ownership of tools, chance of profit and risk of loss as set out in Montreal Locomotive Works, as well as ultimate question of whose business it is.

Here, control was extensively imposed by legislation with virtually no room for independent discretion, Ministry of Health owned major items of equipment, and there was no chance of profit or risk of loss. The intervenor merely carried out crown business as a local manager.

UNION: O.P.S.E.U. and Ontario Union
of Court Reporters

EMPLOYER: Ministry of the Attorney
General

INDIVIDUAL COMPLAINANT: --

TYPE OF APPLICATION/COMPLAINT: Employee Status

DECISION DATE: Sept. 20/88

PANEL: P.C. Picher
W. Walsh
J.H. McGivney

SUMMARY

EMPLOYEE STATUS - Freelance court reporters - Whether independent contractors or employees

EMPLOYEE STATUS - Independent contractors vs. employees - Tests

Issue was whether freelance court reporters were employees within s. 1(1)(f) of Act or independent contractors as argued by the employer. Parties had agreed to omit consideration of s. 1(1)(f)(vi) pending determination of broader issue of employee status.

Freelance reporters comprised about 54 percent of all court reporters providing services in the province, and were used as semi-permanent and permanent replacements where court services had been expanded or staff reporters had left and not been replaced. They were divided into three categories: those who worked exclusively for the Ministry, those who made their services available to other clients with the Ministry's permission, and those who freely made their services available to other clients.

Held: all groups were found to be employees.

At least six tests for distinguishing employees from independent contractors are available, some overlapping. Tribunal's approach is to consider the relationship in issue in light of several of the tests that seem most applicable to the factual context.

First group, reporters who worked exclusively for the Ministry, were employees under the Act, as they were not carrying on their own businesses but were performing tasks to enable the Ministry to fulfill its legislative mandate. They were fully integrated into the Ministry's business of the administration of justice and were subject to the Ministry's control and direction. Their hours, pay and work methods were regulated by the Ministry and they were subject to sanctions if they did not work as directed.

Second group, reporters who made their services available to others only with the Ministry's permission, were also employees under the Act. They were expected to commit themselves to working a certain number of days per week and to live up to that commitment. They could offer their services to other clients only with the Ministry's permission and they were subject to the Ministry's overriding control. Failure to meet the Ministry's expectations, including failure to accept work assignments, would result in sanctions. They were not carrying on independent businesses but rather were part of the Ministry's business. They could be asked to perform clerical duties when their reporting services were not needed, which was consistent with employee status. Many of them also used equipment owned by the Ministry, showing a high degree of integration into the employer's business.

Third group freely offered their services to other clients and worked part-time for the Ministry. However, while working for the Ministry they were subject to its control and direction, were subject to sanctions for refusing assignments, and were integrated into its business, like the second group. Subject to exclusion under s. 1(1)(f)(vi), these reporters were employees.

| | |
|--------------------------------|--|
| UNION: | O.P.S.E.U. and Ontario Union of Court Reporters |
| EMPLOYER: | Ministry of the Attorney General |
| INDIVIDUAL COMPLAINANT: | -- |
| TYPE OF APPLICATION/COMPLAINT: | Certification - Interim |
| DECISION DATE: | July 13/89 |
| PANEL: | P.C. Picher J.H. McGivney W. Walsh |

SUMMARY

EMPLOYEE ORGANIZATION - Status - Ontario Union of Court Reporters -
Circumstances of formation - Section 1(1)(g)

SECTION 1(1)(g) - Employee organization - Status - Ontario Union of Court
Reporters - Circumstances of formation

Issue was status of Ontario Union of Court Reporters as an employee organization within s. 1(1)(g) of Act. Union testified as to formation of organization, including meeting of employees, admission into membership, payment of \$1.00 initiation fees, ratification of constitution by members and election of officers. One of constitution's objects is to regulate relations between employees and employers, and it establishes a procedure for electing officers and calling meetings.

Held: Union is an employee organization within meaning of Act. Matter referred to Registrar to schedule hearing on outstanding issues.

UNION: O.P.S.E.U.

EMPLOYER: Ministry of the Attorney General

INDIVIDUAL COMPLAINANT: Collins et al.

TYPE OF APPLICATION/COMPLAINT: Employee Status

DECISION DATE: April 14/88

PANEL: M.G. Mitchnick
M. Sullivan
J.H. McGivney

SUMMARY

EMPLOYEE STATUS - Provincial prosecutors - Whether real conflict of interest - Scope of omnibus exception in s. 1(1)(l)(viii)

SECTION 1(1)(l)(viii) - Scope of omnibus exception - Employee status of provincial prosecutors

Employee status application regarding provincial prosecutors. Provincial prosecutors exercise a wide scope of professional judgment as part of the provincial system of justice. Issue is whether they are within "omnibus" exception under s. 1(1)(l)(viii).

Held: provincial prosecutors are "employees" for the purposes of the Act.

Employee status decision should be based on duties actually performed, not just on job description. While these vary from location to location in mix of duties, evidence showed any prosecutor could be asked to perform any of the responsibilities of a

provincial prosecutor in the province. Variations therefore were not significant to conclusion as to employee status.

While s. 1(1)(l)(viii) may not be limited to cases of a "managerial" or "confidential" nature, it does require proof of a conflict of interest between an employee's duties and his interests as a bargaining unit member. Here, there was potential conflict based on duty to prosecute union itself or other members of union. However, no real problem for employer or public was shown, as such cases would be rare and could be handled by Crown attorneys or Assistant Crown attorneys, who were not bargaining unit members.

UNION: **Ontario Liquor Boards
Employees' Union**

EMPLOYER: **Liquor Control Board of
Ontario**

INDIVIDUAL COMPLAINANT: **--**

TYPE OF APPLICATION/COMPLAINT: **Bargaining Authority**

DECISION DATE: **May 14/85**

PANEL: **O.B. Shime
E.C. Witthames
L. Binder**

SUMMARY

BARGAINING RIGHTS - Temporary employees - Effect of voluntary recognition

BARGAINING RIGHTS - Time for referrals under s. 40(2)

BARGAINING RIGHTS - Transfer of employees - Time limit - Sections 7 and 18

CERTIFICATION - Voluntary recognition - Representation rights of temporary employees - Scope of bargaining authority under Act

JURISDICTION OF BOARD OF ARBITRATION - Representation rights - Effect of voluntary recognition

PROCEDURE - Bargaining authority referrals under s. 40(2) - Time limit

TEMPORARY EMPLOYEES - Representation rights - Scope of bargaining authority under Act

TRANSFER - Bargaining proposal for time limit - Whether proposal within scope of collective bargaining under Act

SECTION 7 - Transfer of employees - Scope of bargaining authority - Section 18

SECTION 18 - Transfer of employees - Scope of bargaining authority - Section 7

SECTION 40(2) - Procedure - Time limit

Application to determine whether union proposals for time limit on transfers of employees between boards, and for clarification and extension of temporary employees' rights, were within scope of collective bargaining under Act.

Held: proposals were allowable under Act.

Referral to the Tribunal under s. 40(2) may be made at any time up to and during proceedings before a board of arbitration, regardless of how long the proposals have been on the bargaining table.

Union's proposal was prima facie within its s. 7 right to bargain about "transfers". Although time limit might touch on employer's exclusive s. 18 rights to determine appointments, complement and assignments, the nature and thrust of the proposal were within s. 7.

Representation rights under the Crown Employees Collective Bargaining Act are more restrictive than under the Ontario Labour Relations Act, and a board of arbitration has no jurisdiction to grant representation rights where they did not previously exist. However, an employer may voluntarily extend representation rights by direct negotiation with the union.

Employer here had voluntarily recognized union's right to represent temporary employees for several years, and could no longer insist on its strict legal rights. Union proposal merely sought to give further definition to rights of employees who were already represented by union, and was a proper matter for bargaining and for determination by a board of arbitration.

UNION: **O.P.S.E.U.**

EMPLOYER: **Ministry of Education**

INDIVIDUAL COMPLAINANT: **R. Wilson**

TYPE OF APPLICATION/COMPLAINT: **Duty of Fair Representation**

DECISION DATE: **May 22/87**

PANEL: **P. Picher
W. Walsh
R. Gallivan**

SUMMARY

DUTY OF FAIR REPRESENTATION - Meaning of "arbitrary, discriminatory or in bad faith" - Teacher alleging he was mentally ill at time of resignation - Section 30

DISCRIMINATION - Resignation of teacher accepted in settlement of discharge grievance - Teacher alleging he was mentally ill at time of resignation - Employer's duties under section 29(2)(a)

RESIGNATION - Mental capacity - Teacher alleging he was mentally ill at time of resignation - Employer's duties under section 29(2)(a) - Union's duties under section 30

SECTION 29(2)(a) - Resignation of teacher accepted in settlement of discharge grievance - Teacher alleging he was mentally ill at time of resignation - Employer's duties

SECTION 30 - Meaning of "arbitrary, discriminatory or in bad faith" - Teacher alleging he was mentally ill at time of resignation

Complainant was a teacher at Peterborough Teachers' College when he was suspended indefinitely in 1971. Union represented him in settlement of grievance whereby he was transferred to Toronto Teachers' College on probation. Within a few months he was charged with trying to import cocaine into the U.S., a charge to which he pleaded guilty. His teaching certificates were then revoked and he was dismissed. He grieved dismissal, but in 1975, on the advice of the union, agreed to resign and withdraw his grievance in return for severance pay and a clear record.

In 1984 complainant commenced this application, saying that his resignation was invalid because he was mentally ill at the time, and that the employer had breached its duty to not discriminate under s. 29(2)(a) of Act, and that union had breached its duty of fair representation under s. 30 of Act in manner they handled his case.

Held: complaint dismissed.

Both employer and union acted on basis of medical evidence available to them at the time. Evidence showed that while complainant had emotional problems and was receiving psychiatric help, two psychiatrists had stated he was fit to work. There was no evidence that statement of a third psychiatrist calling him "seriously mentally ill" was ever provided to employer or union.

Union acted in what it thought was complainant's best interests by recommending resignation, which might enable him to have his teaching certificates reinstated in future. Statement that he would get more from severance pay than from a losing discharge grievance was a statement of fact, not a bribe to convince him to resign. Union never acted in bad faith, nor was union discriminatory or arbitrary, but rather acted on reasonable considerations. Failure to consult legal counsel was not, in itself, a breach of union's duty, given other efforts taken on complainant's behalf. Union had no reason to suspect that medical summaries it relied on in believing complainant fit to work were incomplete or invalid. Union was not careless, nor did it act with reckless disregard, in failing to seek more medical evidence before negotiating the resignation.

Employer did not breach its obligations in discharging complainant, or in negotiating and accepting his resignation. It relied on medical evidence available to it. Nor did employer bribe complainant into resigning. Employer did not discriminate against him because he was mentally ill nor seek on that ground to deter him from pursuing his grievance. Nor did employer misrepresent settlement terms by promising his teaching certificates would be reinstated; this was not within its power to do, as teaching certificates were controlled by a separate part of the Ministry. Employer acted out of legitimate concerns for its own responsibilities.

UNION: **Ontario Liquor Board
Employees Union**

EMPLOYER: **Liquor Control Board of
Ontario**

INDIVIDUAL COMPLAINANT: **B.H. Currie**

TYPE OF APPLICATION/COMPLAINT: **Religious objection**

DECISION DATE: **Jan. 7/85**

PANEL: **P. Picher
W. Walsh
R.J. Gallivan**

SUMMARY

RELIGIOUS OBJECTION - Preference to pay money to charity - No objection to union - Exemption denied - Section 16(2)

SECTION 16(2) - Religious objection to union dues - Preference to pay money to charity - No objection to union - Exemption denied

Applicant sought religious exemption from paying union dues, on the ground that God had spoken her and told her to pay the money to sick children instead of to the union. She gave little evidence of her religious beliefs, but agreed that her religion does not object to the union or its activities; her religious convictions merely direct her to have a stronger concern for sick children,

Held: application for exemption dismissed.

While applicant had a preference based on her religious conviction or belief, she did not have an "objection" as required by s. 16. Nothing in her beliefs was inconsistent or incompatible with any aspect of the union. While Tribunal need not be persuaded to the logic of a conflict between a religious belief and an objection to the union, there still must be a conflict or objection to justify an exemption.

UNION: O.P.S.E.U.

EMPLOYER: Ministry of Health, Woodstock
Ambulance Ltd. and Thames
Valley Ambulance Ltd.

INDIVIDUAL COMPLAINANT: --

TYPE OF APPLICATION/COMPLAINT: Successor Rights

DECISION DATE: Feb. 10/88

PANEL: O.B. Shime
E. McIntyre
J.H. McGivney

SUMMARY

SUCCESSOR RIGHTS - Ministry taking over ambulance dispatch service - Whether transfer of undertaking under ss. 4 and 5 of Successor Rights (Crown Transfers) Act

Thames Valley and Woodstock were private ambulance services performing dispatching function under control of Ministry. In 1985 Ministry centralized the dispatch function and began operating a central dispatch service itself. Union, which represented employees of Thames Valley and Woodstock, claimed there was a transfer of an undertaking under ss. 4 and 5 of The Successor Rights (Crown Transfers) Act.

Held: application dismissed.

Essence of function of dispatching had clearly been transferred from private undertaking to Crown, even though there had been some changes in equipment and procedures. However, issue was whether an undertaking, within meaning of Act, had been transferred.

Act should be given a liberal interpretation to preserve bargaining rights, and all circumstances should be assessed, not just the legal form of the transaction. Act required a "transfer", meaning a "conveyance, disposition or sale". There was no transfer of licences, as they were cancelled at same time that Ministry exercised its right to provide dispatch services directly under The Ambulance Act. Equipment had belonged to Ministry in the first place and was merely reclaimed, not transferred. Furthermore, equipment was not used in central service so as to indicate a continuation of the business.

There was no managerial or supervisory continuation, but some employees were hired by Ministry. While this might indicate a transfer in combination with other indicators, it was not enough, on its own, to prove the transfer of an undertaking. Fact that worked performed was substantially the same did not create a transfer under the circumstances. Ministry's taking over a of telephone number was a convenience, not indication of a transfer, and payment to owners for loss of personal income did not constitute consideration for transfer of a business.

UNION: O.P.S.E.U.

EMPLOYER: Ministry of Health, Woodstock Ambulance Ltd. and Thames Valley Ambulance Ltd.

INDIVIDUAL COMPLAINANT: --

TYPE OF APPLICATION/COMPLAINT: Successor Rights

DECISION DATE: Jan. 11/89

PANEL: Divisional Court:
Osler J.
Reid J.
Campbell J.

SUMMARY

JURISDICTION OF TRIBUNAL - Successor rights - Standard for judicial review - Successor Rights (Crown Transfers) Act

SUCCESSOR RIGHTS - Jurisdiction of Tribunal - Standard for judicial review - Successor Rights (Crown Transfers) Act - - O.P.S.E.U. and Ministry of Health et al., T/0086/84-2 (Jan. 11/89)

SUCCESSOR RIGHTS - Ministry taking over ambulance dispatch service - Whether transfer of undertaking under ss. 4 and 5 of Successor Rights (Crown Transfers) Act - Judicial review by Divisional Court

Union applied for judicial review of Tribunal's decision in T/0086/84-1, finding there had been no transfer of an undertaking, and sought to quash decision.

Held: application dismissed.

Tribunal carefully analyzed meaning of "transfer" and "undertaking" in Successor Rights (Crown Transfers) Act, as well as relevant jurisprudence and the facts of the case. Matter was exclusively within Tribunal's jurisdiction by virtue of s. 11 of statute, and Court could not say Tribunal's decision was "patently unreasonable" or that it could not "be rationally supported on a construction which the relevant legislation may reasonably be considered to bear." Although court might have adopted a different interpretation, there were no grounds for interfering with Tribunal's decision.

UNION: **C.U.P.E., Local 1750**

EMPLOYER: **Workers' Compensation Board**

INDIVIDUAL COMPLAINANT: **--**

TYPE OF APPLICATION/COMPLAINT: **Bargaining Authority**

DECISION DATE: **Nov. 26/85**

PANEL: **O.B. Shime
E.C. Witthames
J.H. McGivney**

SUMMARY

HEALTH AND SAFETY - Bargaining proposals - Validity of numerous proposals decided - Ss. 7, 18

TECHNOLOGICAL CHANGE - Bargaining proposals - Validity of numerous proposals decided - Ss. 7, 18

SECTION 7 - Bargaining proposals on technological change, health and safety - Validity decided

SECTION 18 - Bargaining proposals on technological change, health and safety - Validity decided

Employer sought ruling on validity of union bargaining proposals dealing with technological change and health and safety, under ss. 7 and 18.

Held: proposals giving definition of technological change, and requiring employer to give notice of change, provide data, consult and bargain with union and submit

matter to interest arbitration, if necessary, were allowable, as they did not infringe employer's s. 18 rights and arbitration proposal was made subject to the Act, as required.

Proposal guaranteeing no employee would lose employment due to technological change was too extreme and breached employer's s. 18 right to determine complement. Proposal to guarantee wages of affected persons was allowable to extent it applied to "red-circle" wages of persons who continued to be employees, but was invalid to extent it would apply to persons who were laid off. Proposal to allow affected employees to transfer into vacant positions or bump junior employees was allowable.

Proposal to require that employees with inadequate skills for new technology be trained was, in essence, intended to prevent layoffs, not intended to offend employer's right to determine training and development, and was allowable. Prohibition against hiring new employees after technological change was breach of employer's s. 18 rights to determine employment and complement.

Proposal that all new classifications created by technological change be included in bargaining unit was invalid as it infringed employer's rights to hire, assign employees, organize and classify. Union has right under s. 40 to apply to Tribunal for determination of employee status.

Proposal prohibiting individual work measurement on basis of health and safety (stress prevention) was invalid and breached employer's right to appraise employees.

Proposal requiring health and safety monitoring equipment did not breach s. 18 right to determine kinds and locations of equipment, as this right is limited to equipment used by employees to perform work.

Proposal requiring training be made available for Cardio Pulmonary Resuscitation was a health and safety matter, not a training matter under s. 18, as it was not training on a work-related matter.

Proposal for Labour Management Rehabilitation Committee did not breach employer's right to discipline and dismiss, as Committee could only make recommendations in health related context and employer would still have final authority.

UNION: **C.U.P.E., Local 1750**

EMPLOYER: **Workers' Compensation Board**

INDIVIDUAL COMPLAINANT: **--**

TYPE OF APPLICATION/COMPLAINT: **Bargaining Authority;
Supplementary**

DECISION DATE: **Apr. 16/86**

PANEL: **O.B. Shime
E.C. Witthames
J.H. McGivney**

SUMMARY

INTEREST ARBITRATION - Proposal to submit issues to interest arbitration during currency of collective agreement - Not proper matter for collective bargaining

PROCEDURE - Reconsideration - Tribunal's policy - Relevance of O.L.R.B. policy - S. 39

PROCEDURE - Relevance of O.L.R.B. policy - Reconsideration - S. 39

RECONSIDERATION - Tribunal's policy - Relevance of O.L.R.B. policy - S. 39

TECHNOLOGICAL CHANGE - Proposal to submit issues to interest arbitration during currency of collective agreement - Not proper matter for collective bargaining

SECTION 39 - Reconsideration - Tribunal policy - Relevance of O.L.R.B. policy

SECTION 40(2) - Tribunal's supervision of interest arbitration board - Proposal to submit issues to interest arbitration during currency of collective agreement - Not proper matter for collective bargaining

Employer sought reconsideration under s. 39 of Act of parts of decision T/0001/85-1 allowing bargaining on issue of including reference to interest arbitration board during the currency of a collective agreement.

Held: Act allows reconsideration where it is "advisable to do so". Tribunal has adopted O.L.R.B. policies in some cases, but need not adopt its policy limiting reconsideration to cases where there is new evidence or new arguments which could not have been made at previous hearing. Given that no evidence was called in this case, and given nature of issues, reconsideration was advisable.

Act creates a complete and comprehensive code for reaching a collective agreement, and this does not allow for reference to interest arbitration board of matters in dispute during currency of agreement. Interest arbitration board's purpose is to conclude a collective agreement, not to deal with interim issues that may arise. Furthermore, Tribunal must be able to exercise supervisory role over interest arbitration board, under s. 40(2), and this could not be done if board were dealing with interim issues. Union's proposal was invalid.

UNION: **O.P.S.E.U.**

EMPLOYER: **Ministry of Government Services**

INDIVIDUAL COMPLAINANT: **R. Anwyl**

TYPE OF APPLICATION/COMPLAINT: **Unfair Labour Practice**

DECISION DATE: **Mar. 29/89**

PANEL: **P. Picher
M. Sullivan
R. Drennan**

SUMMARY

DISCRIMINATION - Reorganization and downgrading of position - New position not requiring travel to aid complainant in performing union duties - Whether reorganization or downgrading breach of s. 29(1), (2)(a) or (2)(c)

INTERFERENCE WITH UNION - Reorganization and downgrading of position - New position not requiring travel to aid complainant in performing union duties - Whether reorganization or downgrading breach of s. 29(1), (2)(a) or (2)(c)

UNFAIR LABOUR PRACTICE - Reorganization and downgrading of position - New position not requiring travel to aid complainant in performing union duties - Whether reorganization or downgrading breach of s. 29(1), (2)(a) or (2)(c)

SECTION 29(1) - Reorganization and downgrading of position - New position not requiring travel to aid complainant in performing union duties - Whether reorganization or downgrading breach of s. 29(1), (2)(a) or (2)(c)

SECTION 29(2)(a) - Reorganization and downgrading of position - New position not requiring travel to aid complainant in performing union duties - Whether reorganization or downgrading breach of s. 29(1), (2)(a) or (2)(c)

SECTION 29(2)(c) - Reorganization and downgrading of position - New position not requiring travel to aid complainant in performing union duties - Whether reorganization or downgrading breach of s. 29(1), (2)(a) or (2)(c)

Complainant claimed reorganization of Operations and Maintenance Department in London District Office, by contracting out of fire alarm maintenance work, was breach of s. 29(1) and (2)(a) and (c), in that it was interference with administration of union and discrimination against complainant due to his union activities.

Complainant was a fire alarm mechanic who was very active in union. Employer originally proposed to reorganize because of backlog in work caused by one mechanic's absence on workers' compensation and complainant's frequent absences for union business. Original plan was to move him to higher position of fire alarm inspector, but after considering insufficient workload for two fire alarm inspectors, employer created two new positions of electrical and fire inspectors. As complainant was not qualified to perform electrical part of job, he was given downgraded job (with red-circling) of maintenance mechanic 3. New job did not involve travel throughout district, which he claimed hampered his ability to perform his union duties.

Held: complaint dismissed.

Privatization policy pre-dated backlog in fire alarm work. Reorganization, including decision to create two electrical and fire inspector positions instead of fire alarm inspectors or one of each position, was motivated by business considerations and not by anti-union animus. Transfer of complainant to maintenance mechanic position was done to keep him within district, not to punish or discriminate against him. Complainant was not entitled as of right to a position allowing him to travel throughout the district. Where there was no anti-union animus, as here, resulting decrease in his ability to carry out his union duties was not a breach of s. 29.

UNION: O.P.S.E.U.

EMPLOYER: Ministry of Health, District of Halton and Mississauga Ambulance Service Ltd. and Emergency Health Services, Central Ambulance Dispatch Centre

INDIVIDUAL COMPLAINANT: --

TYPE OF APPLICATION/COMPLAINT: Successor Rights

DECISION DATE: Aug. 15/88

PANEL: J.H. Devlin
W. Walsh
R. Drennan

SUMMARY

BARGAINING UNIT - Intermingling of employees after transfer of undertaking - Whether separate unit or all-employee unit most appropriate

SUCCESSOR RIGHTS - Ministry taking over ambulance dispatch service - Whether transfer of undertaking under ss. 4 and 5 of Successor Rights (Crown Transfers) Act

District of Halton and Mississauga Ambulance Service Ltd. was a private ambulance dispatch service. In 1985, after nearly a year's notice, the Ministry decided to centralize ambulance dispatch services for this area and several other counties, and opened its own centralized dispatch center. Four out of five of the private service's dispatchers were hired by the central service, as well as the private service's supervisor. Issue was whether there was a transfer of an undertaking within the Successor Rights (Crown Transfers) Act.

Held: application allowed; there had been a transfer of an undertaking.

Although there was no collective agreement in effect between the private service and its dispatchers at the time of centralization, the union had given notice to bargain and the Labour Relations Act would have precluded unilateral changes during that time period. Union continued to represent the employees.

Central question was whether there was a transfer of an undertaking. Function of dispatching ambulances was a distinct and identifiable function which was part of the private service's business, and this function constituted an undertaking under the S.R. (C.T.) Act.

In deciding whether an undertaking had been transferred, regard must be had to the substance of the transaction, not the form, and the S.R. (C.T.) Act should be given a broad and liberal interpretation.

There was no transfer of the private service's licence, as the Ministry did not require a licence to operate the service itself. Here, it was significant that when central service's start-up date was delayed due to technical problems, the private service simply continued as it had in the past. Ministry also used private service's facilities and equipment for a one-week period during the changeover. This supported conclusion that the right to dispatch ambulances in Halton and Mississauga simply passed from the private service to the Crown, not that Crown started a separate and parallel undertaking.

Although specific equipment itself was not transferred, the right to use equipment associated with the dispatch function passed with the function. There was also a transfer of managerial skills in that the private service's supervisor became the assistant manager of the central service. Further, the Ministry took over the private service's telephone number, and although this was in one sense a mere administrative convenience, the Ministry also assumed responsibility for any outstanding liabilities of the private service with regard to the telephone number. Fact there was no transfer of goodwill or customer lists and no compensation paid to private service was not decisive under the circumstances of a regulated monopoly.

Here, transfer of function and right to use Ministry equipment for dispatching purposes, plus transfer of employees, managerial skills and telephone number, amounted to a transfer of an undertaking. Case was distinguishable from T/0086/84 because licences in that case required private service to cease operating upon notice from Ministry; there was no transfer of managerial skills; a proportionately smaller number of private service employees were hired by the central service in that case; and Ministry did not assume responsibility for outstanding liabilities of private service in that case.

Although central service used more sophisticated equipment, provided services to a larger area and required different procedures and responsibilities from dispatchers, there had not been a substantial change in the character of the

undertaking after the transfer. There had been an intermingling of private service employees with pre-existing employees of central service serving areas other than Halton and Mississauga. Given that O.P.S.E.U. was the bargaining agent for the private service and was also the bargaining agent for all Ministry employees, a separate bargaining unit for dispatchers should not be maintained and the dispatchers should be included in the all-employee bargaining unit represented by the union.

UNION:

O.P.S.E.U.

EMPLOYER:

**Ministry of Health, District of
Halton and Mississauga
Ambulance Service Ltd. and
Emergency Health Services,
Central Ambulance Dispatch
Centre**

INDIVIDUAL COMPLAINANT:

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TYPE OF APPLICATION/COMPLAINT:

Successor Rights

DECISION DATE:

Nov. 3/92

PANEL:

**J.H. Devlin
P.J. O'Keefe
C.L. Boettcher**

SUMMARY

BARGAINING RIGHTS - Successor rights - Whether successor employer bound by collective agreement - Whether statutory freeze of employment conditions in effect - Section 8 - Section 3(3) of Successor Rights (Crown Transfers) Act

SUCCESSOR RIGHTS - Whether successor employer bound by collective agreement - Whether statutory freeze of employment conditions in effect - Section 8- Section 3(3) of Successor Rights (Crown Transfers) Act

SECTION 8 - Successor rights - Whether successor employer bound by collective agreement - Whether statutory freeze of employment conditions in effect - Section 3(3) of Successor Rights (Crown Transfers) Act

Collective agreement between the union and predecessor employer expired on March 31/85 and the union gave notice of desire to bargain on January 7/85. In January, 1986 the parties signed a collective agreement with a term from April 1/85 to March 31/86.

In August, 1988 the Tribunal ruled that the undertaking had been transferred from the predecessor to the Crown effective June 3/85. The bargaining unit was included in the union's all-employee unit.

Issue was whether Ministry was bound by collective agreement negotiated with predecessor employer, or any subsequent agreements in effect upon date of Tribunal's decision.

Held: Ministry was not bound by predecessor collective agreement.

On date of transfer, June 3/85, there was no collective agreement in effect between union and predecessor. Later retroactive agreement was not binding upon the successor employer, as only obligations in existence at date of transfer could pass to the successor.

Freeze created by notice to bargain given to predecessor, under s. 79(1) of Labour Relations Act, did not extend the life of the expired collective agreement.

Neither the notice given to the predecessor nor the freeze existing prior to the transfer applied to the successor employer. Under s. 3(3) of Successor Rights (Crown Transfers) Act, union was entitled to give notice to bargain to the successor. Doing so would then create a freeze of conditions of employment under s. 8 of C.E.C.B.A. and s. 3(3) of S.R. (C.T.) Act.

While union did not give successor written notice to bargain, it was possible that concept of constructive notice, based on union's conduct, could apply. Hearing was to be reconvened on this issue and issue of status of two employees, which could be affected by finding of whether or not a freeze existed.

UNION:

O.P.S.E.U.

EMPLOYER:

Ministry of Health, District of
Halton and Mississauga
Ambulance Service Ltd. and
Emergency Health Services,
Central Ambulance Dispatch
Centre

INDIVIDUAL COMPLAINANT:

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TYPE OF APPLICATION/COMPLAINT:

Successor Rights/ Bargaining
Authority

DECISION DATE:

Aug. 24/93

PANEL:

J.H. Devlin
P.J. O'Keefe
C.L. Boettcher

SUMMARY

BARGAINING RIGHTS - Successor rights - Constructive notice to bargain - Whether statutory freeze of employment conditions in effect - Section 8 - Section 3(3) of Successor Rights (Crown Transfers) Act

SUCCESSOR RIGHTS - Constructive notice to bargain - Whether statutory freeze of employment conditions in effect - Section 8- Section 3(3) of Successor Rights (Crown Transfers) Act

SECTION 8 - Successor rights - Constructive notice to bargain - Whether statutory freeze of employment conditions in effect - Section 3(3) of Successor Rights (Crown Transfers) Act

Issue was whether union, by its conduct, gave the successor Ministry constructive notice of its desire to bargain, thereby creating a statutory freeze of employment conditions under s. 8.



Union wrote and called Ministry before transfer seeking to negotiate terms of transfer, and original application filed within days of transfer took position that successor was bound by terms of expired collective agreement with predecessor.

Ministry argued written notice was required under both C.E.C.B.A. and the Successor Rights (Crown Transfers) Act, and that concept of constructive notice had no application. Also, it claimed union's contact was premature and not specific about desire to bargain to renew collective agreement, while application was too late, as it was filed after transfer.

Held: union gave constructive notice, which was sufficient to create a statutory freeze under s. 8.

Ontario Labour Relations Board had applied concept of constructive notice in similar circumstances. Regard must be had to the substance of what occurred and the legislative purpose involved.

Here, union's first notice was many months before transfer, but early notice can be cured by the passage of time. Union continued to pursue an agreement with Ministry until date of transfer. Furthermore, union's conduct both before and immediately after transfer left no doubt as to its desire to bargain, while Ministry was not prepared to enter into discussions.

Union's course of conduct therefore amounted to constructive notice to bargain, which satisfied requirements of both s. 8 and S.R. (C.T.) Act. This resulted in freeze of conditions, which were binding on successor Ministry and remained in effect until date of Tribunal's decision finding transfer had occurred.

UNION: **Amalgamated Transit Union,
Local 1587**

EMPLOYER: **Toronto Area Transit
Operating Authority**

INDIVIDUAL COMPLAINANT: **--**

TYPE OF APPLICATION/COMPLAINT: **Bargaining Authority**

DECISION DATE: **Dec. 3/85**

PANEL: **O.B. Shime
E.C. Witthames
J.H. McGivney**

SUMMARY

APPRENTICESHIP - Bargaining proposal to establish joint committee -
Proposal invalid

BARGAINING RIGHTS - Tribunal's role in ruling on validity of proposals

CLASSIFICATION SYSTEM - Bargaining proposal to add new
classifications invalid - Proposal to establish joint job description review
committee valid - Ss. 7, 18

CONTRACTING OUT - Bargaining proposal to limit where employees laid
off or where it would cause layoffs - Proposal invalid

HIRING - Bargaining proposal to give preference to current part-timers for
full-time jobs - Proposal valid

JOB DESCRIPTIONS - Bargaining proposal to establish joint review
committee - Proposal valid - Ss. 7, 18

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JOB EVALUATION - Bargaining proposals about frequency, form and employer's use of appraisals invalid

JOINT COMMITTEE - Apprenticeship - Bargaining proposal to establish committee disallowed

JOINT COMMITTEE - Bargaining proposal to establish joint job description committee allowable - Ss. 7, 18

PART-TIME EMPLOYEES - Bargaining proposals limiting right to hire, right to assign overtime work and right to assign work at different locations- Proposals invalid

PART-TIME EMPLOYEES - Bargaining proposal for preferential hiring rights for full-time jobs - Proposal valid

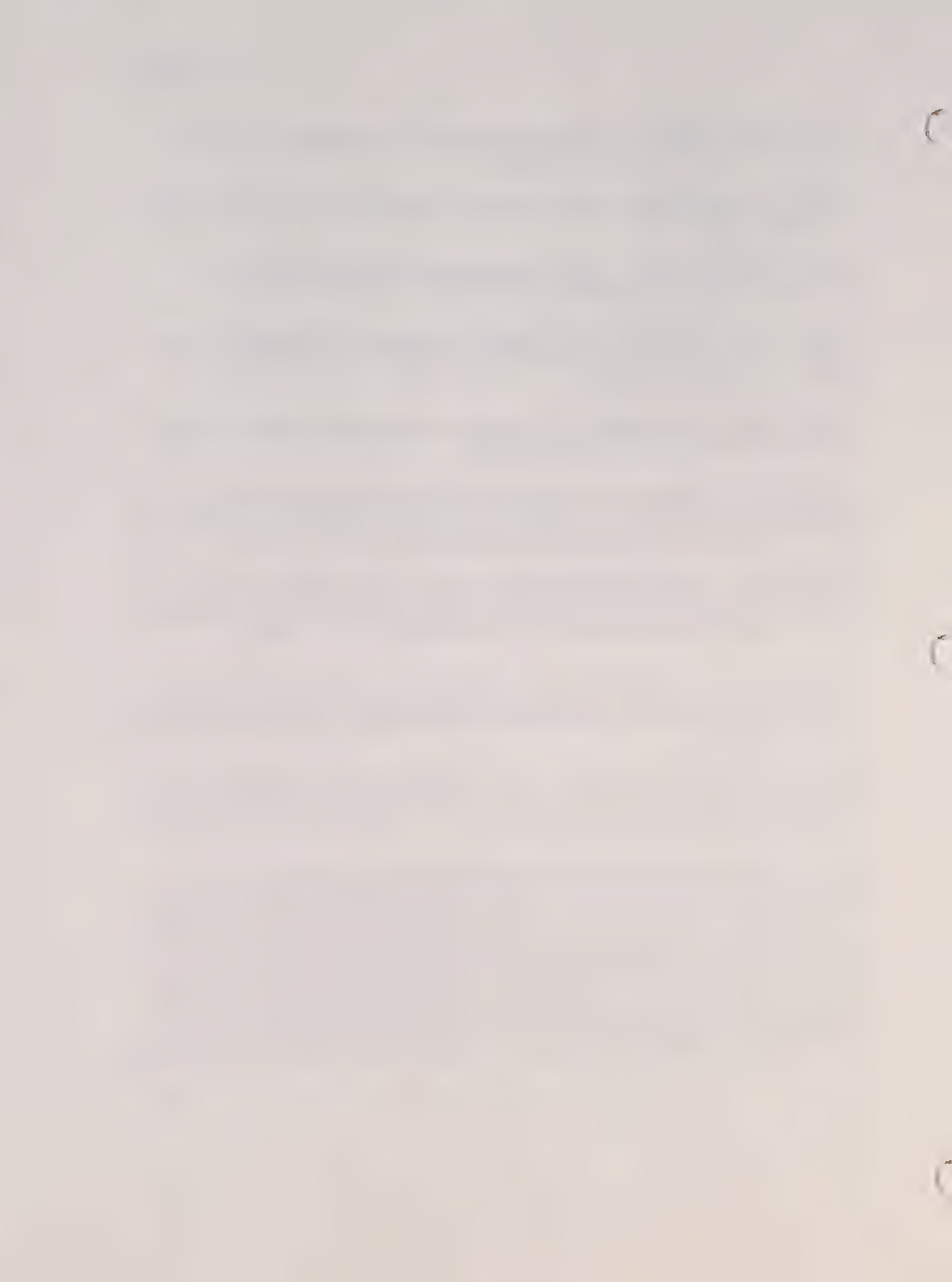
SECTION 7 - Bargaining proposals on part-time employees, hiring preference for part-timers, contracting out, job evaluation, apprenticeship joint committee, job description joint committee - S. 18 - Validity

SECTION 18 - Bargaining proposals on part-time employees, hiring preference for part-timers, contracting out, job evaluation, apprenticeship joint committee, job description joint committee - S. 7 - Validity

Employer applied for determination of whether certain union bargaining proposals were properly within scope of bargaining under Act, considering sections 7 and 18.

Held: Tribunal's function was to rule on proposals, not to indicate words required or words making proposals invalid, as that would make Tribunal the draftsman for one of the parties.

Proposal that employer must offer full-time hours to certain part-time employees, and proposed limit on right to hire further part-time employees, were breach of employer's s. 18 rights to assign employees and determine complement and organization, and were disallowed. Proposal to assign all overtime work to full-time employees rather than part-timers breached employer's right to assign under s. 18. So did proposal that employer must assign work at a location to employees normally working at that location before assigning it to someone from another location. Proposal to give part-timers right to preferential treatment for full-time vacancies was allowable.



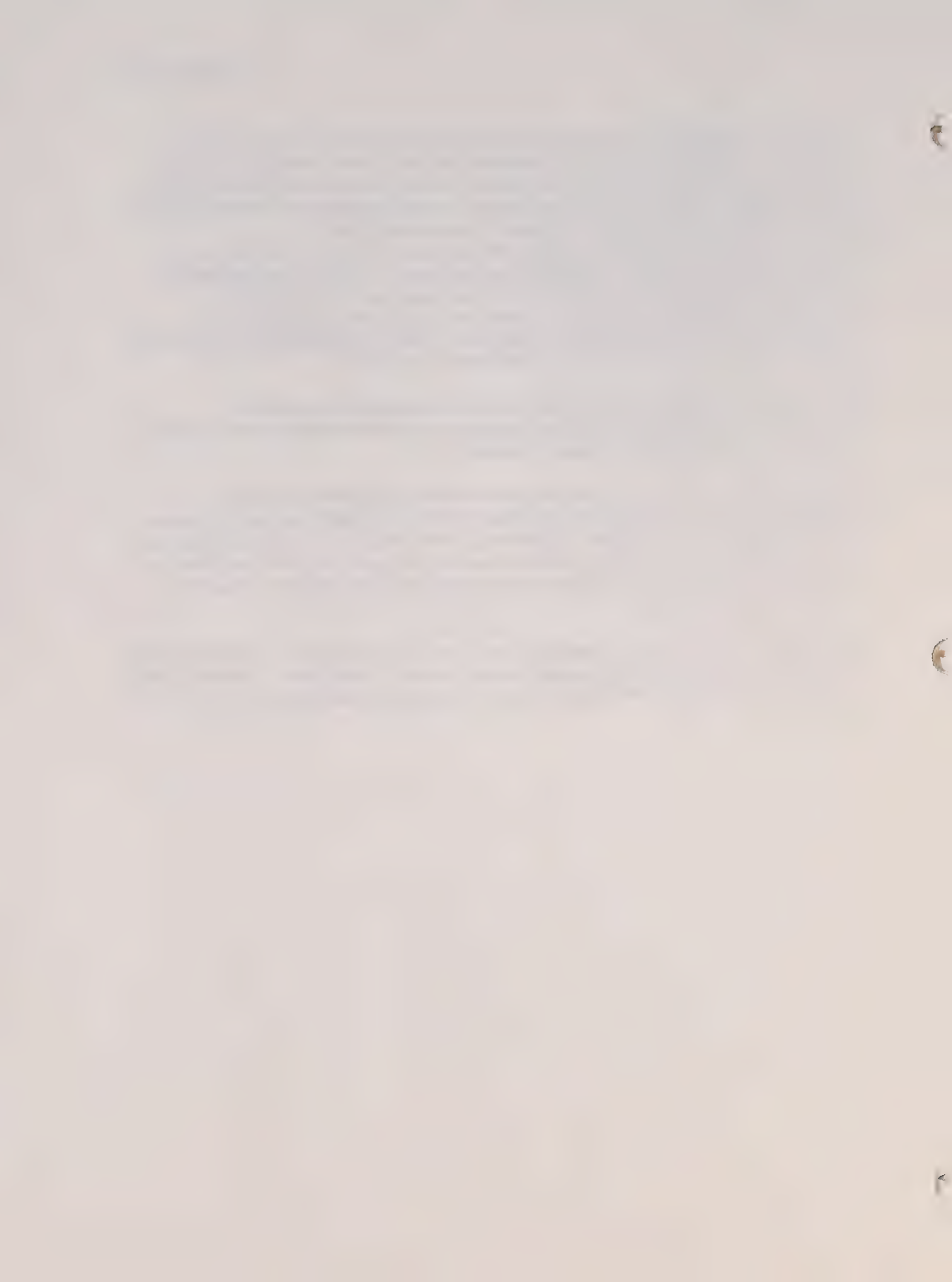
Proposal to forbid contracting out where any employees are laid off or absent due to illness, or any contracting out that would result in layoffs, interfered with employer's s. 18 rights. Proposal here would substantially prevent contracting out and went beyond permitted scope of contracting out clauses, which is to mitigate effects of contracting out.

Proposals limiting employee appraisals to once a year, requiring use of form approved by union, and limiting employer's right to use appraisal results were disallowed, as they so limited process as to render it meaningless. But proposals that union and employee receive copy of appraisal and that employee have right to grieve appraisal believed unfair were allowable as they were not precluded by s. 18(2).

Proposal to establish joint apprenticeship committee to establish apprenticeship program was disallowed as it violated employer's right to control training and development under s. 18.

Proposal to establish joint committee to arrive at agreed-upon job descriptions was allowable as it merely gave union right to participate in job descriptions and did not violate employer's right to classify positions or assign employees. Although description might touch upon classification, this was allowable given union's rights under s. 7 to bargain about the classification system.

Proposal to add two new classifications was disallowed as it interfered with employer's right to assign, organize and classify workforce. Proposal could be allowable if it dealt with rate of pay of existing classification.



UNION: **Ontario Liquor Boards
Employees Union**

EMPLOYER: **Liquor Control Board of
Ontario and Liquor Licence
Board of Ontario; Manpower
Temporary Services and Olsten
Temporary Services,
Intervenors**

INDIVIDUAL COMPLAINANT: **--**

TYPE OF APPLICATION/COMPLAINT: **Employee Status**

DECISION DATE: **March 30/89**

PANEL: **M. Mitchnick
E.C. Witthames
R.M. Drennan**

SUMMARY

CONTRACTING OUT - "Contracting-in" hiring of security guards - Employee status

EMPLOYEE STATUS - Security guards provided through "contracting-in" arrangement - Issue of true employer - Control test

EMPLOYEE STATUS - Temporary or casual employees hired through G.O. Temporary and external agencies - Meaning of "temporary" - Meaning of s. 1(1)(f)(vii)

TEMPORARY EMPLOYEES - Temporary or casual employees hired through G.O. Temporary and external agencies - Meaning of "temporary" - Meaning of s. 1(1)(f)(vii) - Employee status

SECTION 1(1)(f)(vii) - Temporary or casual employees hired through G.O. Temporary and external agencies - Meaning of "temporary" - Extent of exclusion - Employee status

Issue was employee status of casual or temporary employees hired through temporary agencies, including G.O. Temporary program, outside temporary agencies, and the Canadian Corps of Commissionaires.

Casual employees were used in two situations: a night security guard supplied by the Canadian Corps of Commissionaires for the Boards' head office; and various office staff supplied by G.O. Temporary and outside temporary services to replace employees on leave or vacation, to handle short-term peaks in workload, for special projects, and to fill vacancies pending final posting decisions.

Held: application allowed in part. Night security guards were employees for purposes of Act; the other casual employees were not.

Guards were supplied regularly through "contracting-in" arrangement, and there was no evidence of any significant degree of supervision by anyone other than Boards' management. Corps merely supplied individuals in uniform and handled payroll transactions for those people. This was not enough to make Corps the true employer where the Boards retained control over performance of the work and, to some extent, the individuals provided.

Temporary office staff were not employees within meaning of Act because of exclusion in s. 1(1)(f)(vii). Whether provided through G.O. Temporary services or through an external agency, these temporary assignments were "arranged by" and "in accordance with" the Civil Service Commission's program for temporary staff, which authorized three sources of temporary staff. This exclusion was not limited to G.O. Temps only. Word "temporary" merely meant "impermanent or transitory or lasting for a time only".

UNION: C.U.P.E., Local 3096

EMPLOYER: North Waterloo Housing
Authority (Ministry of
Housing)

INDIVIDUAL COMPLAINANT: L. Brown et al.

TYPE OF APPLICATION/COMPLAINT: Employee Status

DECISION DATE: Mar. 20/87

PANEL: J.H. Devlin
M. Sullivan
J.H. McGivney

SUMMARY

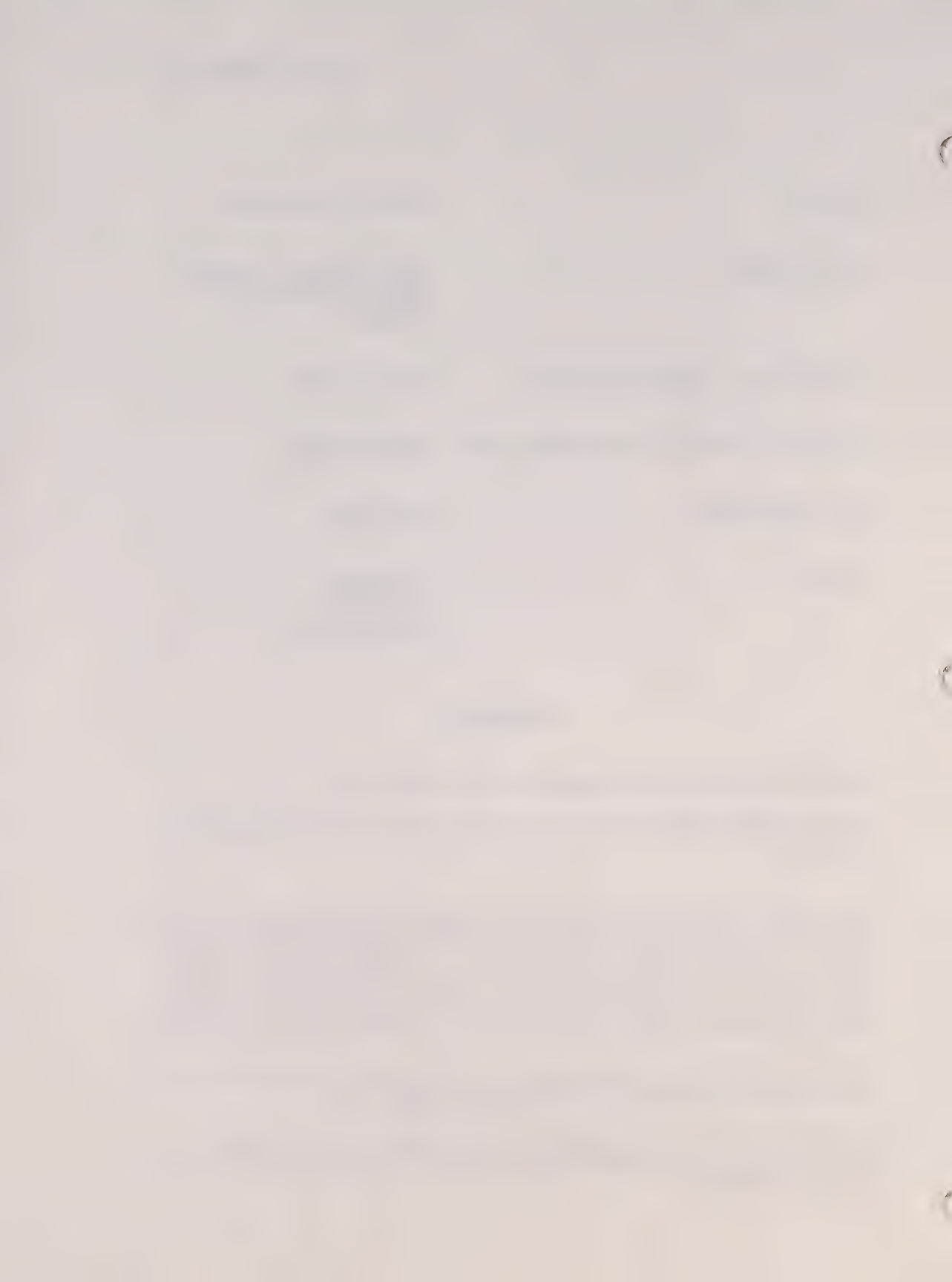
EMPLOYEE STATUS - Independent contractor - Tests

EMPLOYEE STATUS - Maintenance handymen - Whether independent contractors

Union claimed three Maintenance Handymen were employees; Authority claimed they were independent contractors. Handymen provided own tools, vehicle, workers' compensation payments and liability insurance, and were paid gross amount at hourly rate. They set own schedule and work methods, but spent 85-100% of their time working for Authority. Authority provided materials, major tools, and supervised their work to some extent.

Held: handymen were employees, based on four-fold test, organization test and factors set out in O.L.R.B.'s Algonquin Tavern case.

Evidence showed regular availability was necessary feature of their continuing to do work, and handymen regularly worked eight hours a day, five days a week for



Authority, so they had little economic independence. Pay was based on non-negotiated hourly rate rather than on set price basis. Each was controlled by an

assigned supervisor and made daily contact with Authority. Each obtained directions from supervisor if problems were encountered, and supervisors regularly checked their work. These elements indicated employee relationship despite provision of own tools, insurance and deductions, which indicated independent contractor relationship. Given that they had long-standing relationship with Authority and were integral part of Authority's operation, they were employees within meaning of Act.

UNION: **Canadian Union of Housing
Employees, Local 1983
(Applicant) and C.U.P.E. Local
767 (Intervener)**

EMPLOYER: **Metropolitan Toronto Housing
Authority**

INDIVIDUAL COMPLAINANT: **--**

TYPE OF APPLICATION/COMPLAINT: **Certification;Preliminary**

DECISION DATE: **Feb. 11/86**

PANEL: **P. Picher
W. Wright
E. Witthames**

SUMMARY

EMPLOYEE ORGANIZATION - Relevance of members' constitutional right to run for office - S. 1(1)(g)

SECTION 1(1)(g) - Employee organization status - Relevance of members' constitutional right to run for office

Intervener argued applicant was not an employee organization under s. 1(1)(g) because its constitution required members to have attended at least 12 of previous regularly scheduled general membership meetings before being eligible to run for office. Since 12 meetings would not have taken place before next scheduled elections, intervener claimed members were discriminated against within meaning of Re C.S.A.O. National Inc. and Oakville Trafalgar Memorial Hospital Association (1972), 26 D.L.R. (3d) 63 (Ont. C.A.).



Held: applicant is employee organization as it does not fall within any of exceptions in s. 1(1)(g). Eligibility of members to run for office is inappropriate ground for denying applicant status, as it would add a condition of status not required by Act. In any event, applicant has already advised members they can run for office, and constitution allows for amendment by two-thirds majority.

UNION: **Canadian Union of Housing
Employees, Local 1983
(Applicant) and C.U.P.E. Local
767 (Intervener)**

EMPLOYER: **Metropolitan Toronto Housing
Authority**

INDIVIDUAL COMPLAINANT: **--**

TYPE OF APPLICATION/COMPLAINT: **Certification**

DECISION DATE: **Oct. 10/86**

PANEL: **P. Picher
W. Wright
E. Withthames**

SUMMARY

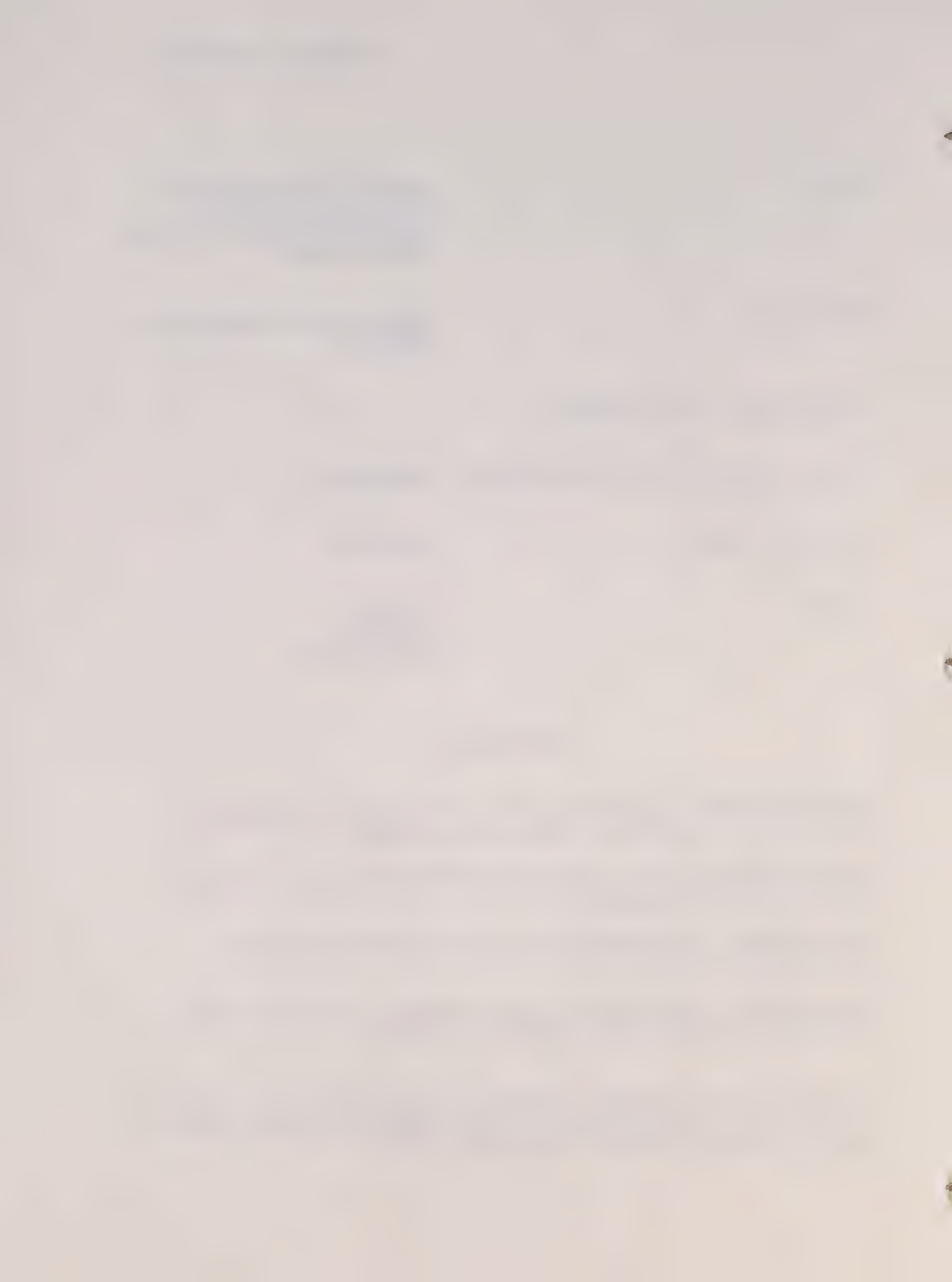
ADJOURNMENT - Certification hearing - Witnesses on vacation but no claim witnesses unavailable - Adjournment refused

CERTIFICATION - Vote and counting of ballots - Procedure - Whether irregularities requiring new vote

PROCEDURE - Certification vote and counting of ballots - Whether irregularities requiring new vote

PROCEDURE - Adjournment of hearing - Witnesses on vacation but no claim witnesses unavailable - Adjournment refused

Applicant sought certification and sought to displace intervener. After vote was taken and counted and applicant got less than 50% of votes, applicant objected to aspects of voting procedure and to count.



Held: application for certification dismissed. As in O.L.R.B.'s jurisprudence, mistakes or irregularities that don't affect the result of a vote will not invalidate the election as long as it was conducted in substantially fair manner.

Failure to count unused ballots or to allow parties to count them did not affect fairness of vote. In spite of fact that there were more unused ballots than originally believed, all used and counted ballots contained Returning Officer's initials and there was no evidence of impropriety or dishonesty. Fact that Returning Officer allowed applicant to inspect ballots alone after they were counted does not show loose procedure or indicate there were improprieties that affected the result.

Similarly, fast and somewhat confusing counting procedure did not cast doubt on reliability of vote or count, as all ballots were handled first by Returning Officer, who initialled them before passing them to parties, and there was no suggestion of actual wrongdoing. Torn tape on one ballot box was not cause for doubting reliability of vote or count where seal was not broken, there was no evidence of actual interference and parties had all expressly agreed to go ahead with count despite torn tape.

Fact that there was no document available for applicant to sign after count to register objections did not cast doubt on procedure, as applicant had full opportunity to register complaints after receiving formal notice of vote results from Tribunal.

Objections relating to vote were not established, even if it would be proper to consider them after time for objections had passed without objections being filed. Returning Officer's use of one blank ballot to tally number of voters, and his destruction of that ballot, did not affect result. Fact that Returning Officer briefly left room during vote, with blank ballots in his hand, does not suggest any impropriety as applicant's officer followed him into room and found him discussing personal matters with someone else.

Initial coin toss to determine order of parties' names on ballot was not improper nor did it cast doubt on reliability of vote just because Returning Officer didn't leave coin undisturbed on table until applicant could look at it.

Applicant requested adjournment of reconvened hearing because some witnesses would be on vacation, but there was no evidence hearing would cause problems for a specific witness or that witnesses would be out of town and unavailable to testify. Since Tribunal could not reschedule hearing within a reasonable time or within time requested by applicant, and since intervener objected to adjournment, Tribunal refused to adjourn hearing. Applicant then refused to attend and Tribunal concluded proceedings in applicant's absence, on basis of applicant's evidence adduced on earlier hearing date. Even taking applicant's case at highest, since main witness was never cross-examined, there was no cause to conclude vote as taken and counted did not represent employees' true wishes and was not fair and proper.

UNION: **O.P.S.E.U.**

EMPLOYER: **Ministry of Health**

INDIVIDUAL COMPLAINANT: **--**

TYPE OF APPLICATION/COMPLAINT: **Employee Status;
Successor Rights**

DECISION DATE: **June 8/87**

PANEL: **J.H. Devlin
W. Walsh
R.Drennan**

SUMMARY

EMPLOYEE STATUS - Interim ambulance service - Whether "project of a non-recurring kind" - S.1(f)(vii)

SUCCESSOR RIGHTS - Ambulance service private operator's licence revoked - Ministry providing interim service - Whether transfer of undertaking - Successor Rights (Crown Transfers) Act - Relevance of jurisprudence under Labour Relations Act

SECTION 1(1)(f)(vii) - "Project of a non-recurring kind" - Interim ambulance service

Private ambulance operator, whose employees were represented by union, had licence revoked by Ministry, which then began operating an interim ambulance service until legal issues with private operator were settled. Most of Ministry's ambulance attendants had worked for private operator and most of private operator's attendants were hired by Ministry. Union claimed there was transfer of undertaking under Successor Rights (Crown Transfers) Act and that ambulance attendants were employees under Crown Employees Collective Bargaining Act.

Held: application allowed. Decisions under Labour Relations Act regarding sale of a business were useful in considering meaning of "transfer" under Successor Rights Act. Although there was no transfer of assets between private operator and Ministry, no consideration, and no transfer of managerial skills, nevertheless Ministry had taken

over exclusive control of ambulance service in area, which right had previously belonged to private operator under licence. This was a transfer of the undertaking.

Fact that Ministry intended to run service only temporarily, although service for area would continue under other management, did not make interim service a "project of a non-recurring kind" under s.1(1)(f)(vii). Attendants are not excluded from definition of "employee" and should be included in main bargaining unit represented by union.

UNION: **Ontario Liquor Boards
Employees' Union**

EMPLOYER: **Liquor Control Board of
Ontario**

INDIVIDUAL COMPLAINANT: **Trevor Murdough**

TYPE OF APPLICATION/COMPLAINT: **Duty of Fair Representation**

DECISION DATE: **April 15/87**

PANEL: **M. Mitchnick
W. Walsh
R. Drennan**

SUMMARY

DUTY OF FAIR REPRESENTATION - Settlement of grievance - Whether settlement unfair to non-grievors

SECTION 30 - Duty of fair representation - Settlement of grievance - Whether settlement unfair to non-grievors

Complainant claimed union breached its S.30 duty of fair representation by settling grievance regarding seniority rights of listed part-time employees because other part-time employees who didn't grieve were not entitled to same remedy.

Held: complaint dismissed. Union had posted notices and held public meetings on subject of seniority, grievance and settlement of grievance. Complainant attended meetings and had chance to grieve but chose not to for his own reasons. Complainant cannot seek to raise his interest only after grievance succeeded.

UNION: **O.P.S.E.U.**

EMPLOYER: **Ministry of Community and Social Services**

INDIVIDUAL COMPLAINANT: **--**

TYPE OF APPLICATION/COMPLAINT: **Unfair Labour Practice**

DECISION DATE: **Feb. 27/87**

PANEL: **M.G. Mitchnick
W. Wright
M.J. Sullivan**

SUMMARY

INTERFERENCE WITH UNION - Failure to deal with union at Stage 2 of grievance procedure - Direct dealing authorized by collective agreement - S.29(1)

UNFAIR LABOUR PRACTICE - Interference with union - Failure to deal with union at Stage 2 of grievance procedure - Direct dealing authorized by collective agreement - S.29(1)

SECTION 29(1) - Interference with union - Failure to deal with union at Stage 2 of grievance procedure - Direct dealing authorized by collective agreement

Employees of Children's Psychiatric Research Institute grieved. After Stage 1 denial of grievance, union wrote directly to Deputy Minister asking that it deal directly with union on grievance. Union did not give copy of letter to C.P.R.I. management. A few weeks later, C.P.R.I. management wrote directly to grievors and did not copy union. Union filed complaint of union interference under s.29(1) of Act.

Held: collective agreement's grievance procedure allows individuals' right to carry their own grievances and to elect union's aid at any stage.

Management had no notice of grievors' consent to have union represent them in matter. Management's failure to follow its own practice of copying union on second-stage replies to individual grievors was due to administrative error, not attempt to interfere with union representation of employees. Complaint dismissed.

UNION: **O.P.S.E.U.**

EMPLOYER: **Ministry of Correctional
Services**

INDIVIDUAL COMPLAINANT: **John Waggoner**

TYPE OF APPLICATION/COMPLAINT: **Unfair Labour Practice**

DECISION DATE: **Feb. 11/87**

PANEL: **J.H. Devlin
D. Bonazzo
R. Drennan**

SUMMARY

PROCEDURE - Delay - Unfair labour practice complaint - No prejudice to employer - Employer delaying in objecting to complaint

PROCEDURE - Unfair labour practice - Form of complaint - Allegations must relate to breach of particular section of Act - Ss.29(1) and (2)(a)

RES JUDICATA - Unfair labour practice - Tribunal cannot consider incidents that have already been grieved and resolved

UNFAIR LABOUR PRACTICE - Form of complaint - Sufficiency of allegations - Particulars - Ss.29(1) and (2)(a)

UNFAIR LABOUR PRACTICE - Delay - No prejudice to employer - Employer delaying in objecting to complaint

UNFAIR LABOUR PRACTICE - Res judicata - Tribunal cannot consider incidents that have already been grieved and resolved - S.29(2)(a)

SECTION 29(2)(a) - Form of complaint - Criteria for alleging breach of section - Particulars

SECTION 29(1) - Form of complaint - Criteria for alleging breach of section - Particulars

Employee filed complaint under ss. 29(1) and (2)(a) alleging harassment, intimidation and coercion due to his position as union's Chief Steward, for his filing of grievances and for issuing complaints of unprofessional conduct against other employees. Employer raised preliminary issues including whether complaints were res judicata, whether there was undue delay, and with regard to form and sufficiency of allegations.

Held: complainant given time to amend complaint and give particulars. Complaint must set out all incidents on which complainant relies, and section of Act allegedly violated.

With regard to s.29(2)(a) of Act: complaint that after filing a grievance he was threatened with dismissal is not sufficient to constitute violation unless it is alleged that threat was a direct response to grievance. Allegation that complainant was given an attendance letter after testifying on behalf of a grievor against employer could constitute a violation of s.37(1), but only if it is alleged that events were directly related. Complaints of harassment for filing unprofessional conduct complaints against officers cannot establish a violation of s.29(2)(a), as issuing complaints of unprofessional conduct do not involve exercising a right under the Crown Employees Collective Bargaining Act. Complaints based on incidents that had already been grieved and resolved cannot establish retaliation where there was no response to filing of grievance other than attempt to resolve it and where merits have already been dealt with by Grievance Settlement Board. Complaints of harassment, without relating them to complainant's exercise of his rights under Act, are insufficient, as mere harassment does not constitute violation of s.29(2)(a).

With regard to s.29(1): While some allegations in complaint could suggest violation of s.29(1), they are not sufficiently particularized or alleged to be related to complainant's union position.

With regard to delay, employer did not complain until more than six months after filing of complaint, nor has employer demonstrated prejudice. However, employer will be allowed to renew objection on this ground after amendment of complaint.

UNION: **O.P.S.E.U.**

EMPLOYER: **Ministry of Transportation and Communications**

INDIVIDUAL COMPLAINANT: **--**

TYPE OF APPLICATION/COMPLAINT: **Unfair Labour Practice**

DECISION DATE: **Feb. 19/87**

PANEL: **M.G. Mitchnick
M.J. Sullivan
R.M. Drennan**

SUMMARY

UNFAIR LABOUR PRACTICE - Statutory basis of claim - S.29 or s.37 - Employees alleging downgrading due to grievance filed by others

SECTION 29 - Scope - Complaint based on alleged downgrading due to grievance filed by others

Union alleged interference with union, discrimination or intimidation of employees, and discrimination or intimidation of witnesses contrary to ss.29(1), (2)(a) and (c), and 37(1)(c) and (d). Problem arose from downgrading of Kingston Microfilm Operator 3's to Microfilm Operator 2's after employees in another Ministry grieved, claiming they should be classified as "3's" instead of "2's" based on usage of Kingston Microfilm Operator 3's.

At preliminary hearing, issue was whether complaint should be brought under s.29, although employer conceded all issues could go forward and be dealt with under s.37 of Act.

Held: it is conceivable that s.29 could apply. Given that employer has conceded case can proceed under s.37, there is little practical difference in case to be met regardless of which section is relied upon. Nor is there any prejudice to employer in deferring decision on applicability of s.29 until full facts are known.

Matter should not be deferred pending arbitration, since matter in issue before Tribunal is the employer's motive, which would not be relevant at arbitration.

UNION: **O.P.S.E.U.**

EMPLOYER: **Ministry of Transportation and Communications**

INDIVIDUAL COMPLAINANT: **--**

TYPE OF APPLICATION/COMPLAINT: **Unfair Labour Practice**

DECISION DATE: **July 10/87**

PANEL: **M. Mitchnick
M. Sullivan
R.M. Drennan**

SUMMARY

CLASSIFICATION - Downgrading - Whether unfair labour practice - Whether motivated by classification "usage" grievance

UNFAIR LABOUR PRACTICE - Interference and discrimination - Presumption of unlawful intent - Downgrading due to classification "usage" grievance

SECTION 29 - Presumption of unlawful intent - Presumption rebuttable

Union alleged interference with union, discrimination or intimidation of employees, and discrimination or intimidation of witnesses contrary to ss.29(1), (2)(a) and (c), and 37(1)(c) and (d). Problem arose from downgrading of Kingston Microfilm Operator 3's to Microfilm Operator 2's after employees in another Ministry grieved, claiming they should be classified as "3's" instead of "2's" based on usage of Kingston Microfilm Operator 3's.

Held: complaint dismissed. Evidence showed that M.T.C. had initiated review and made preliminary decision to downgrade Kingston "3's" long before other grievance was filed. Ministry had delayed in order to confirm facts through desk audit and to

confirm there was no alternative to downgrading. Comments made by local management to effect that downgrading was due to grievance from other Ministry were conjecture only, as local management was not informed about details of review and planned downgrading. Any presumption of unlawful intent based on management conduct is rebuttable, and was clearly rebutted here.

UNION: **O.P.S.E.U.**

EMPLOYER: **Ministry of Revenue**

INDIVIDUAL COMPLAINANT: **J. Vott et al.**

TYPE OF APPLICATION/COMPLAINT: **Employee Status**

DECISION DATE: **September 8/88**

PANEL: **J.H. Devlin
M. Sullivan
J.H. McGivney**

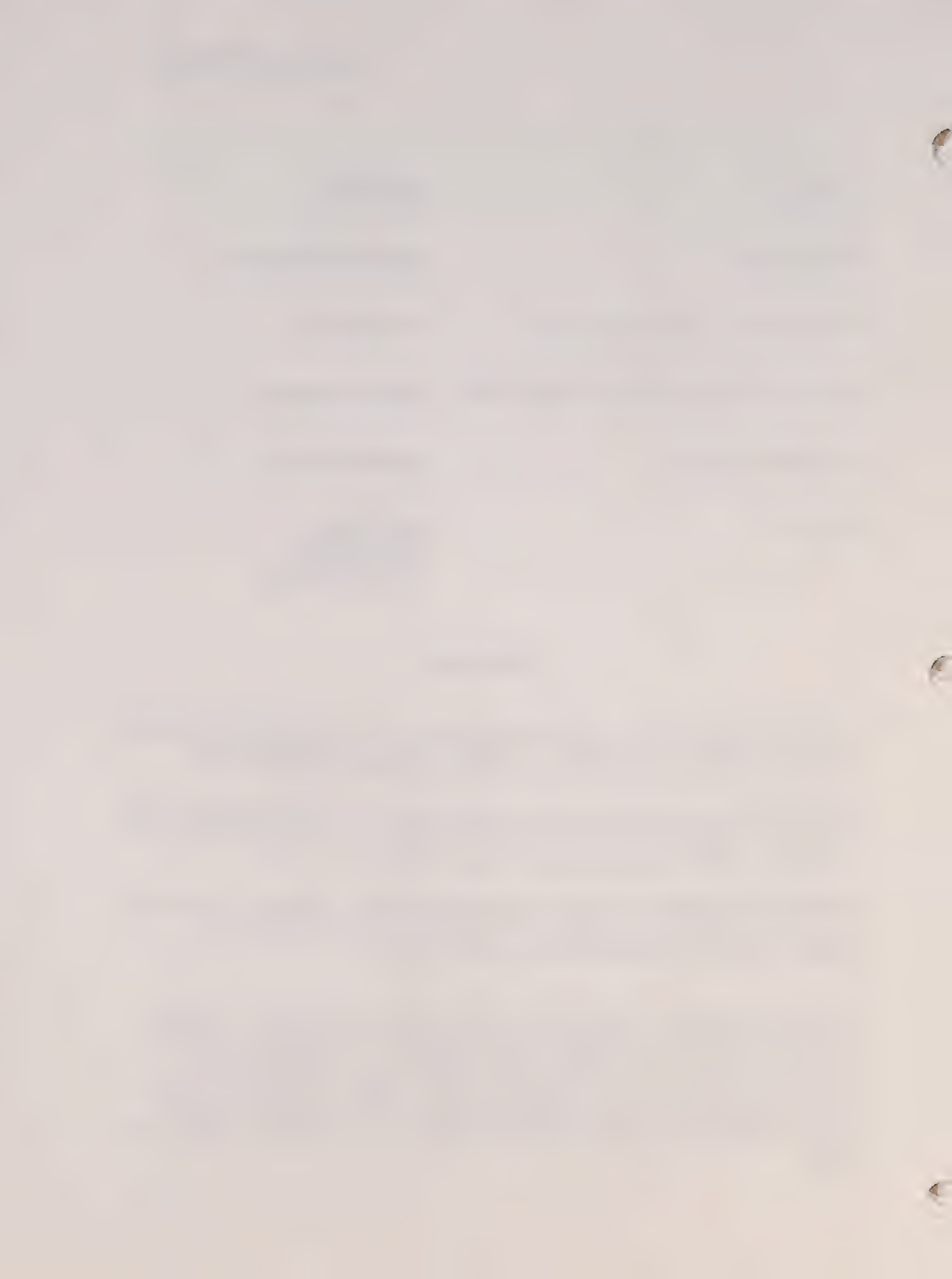
SUMMARY

EMPLOYEE STATUS - Managers, Mapping Services - Whether performing more than technical supervision - Whether given real independent authority to deal with grievances - Sections 1(1)(l)(iii) and (iv)

SECTION 1(1)(l)(iii) - Managers, Mapping Services - Whether performing more than technical supervision - Whether given real independent authority to deal with grievances - Section 1(1)(l)(iv)

SECTION 1(1)(l)(iv) - Managers, Mapping Services - Whether performing more than technical supervision - Whether given real independent authority to deal with grievances - Section 1(1)(l)(iii)

Issue was employee status of Managers, Mapping Services. As parties could not agree on a representative witness, decision dealt only with the status of four Managers who testified. Managers had previously been classified as Mapping Supervisors, but after reorganization of Mapping departments job was reorganized and posted as a non-bargaining-unit position. Union now claimed Managers should be included in bargaining unit.



Held: three Managers were employees, one was excluded. While it may be administratively inconvenient for some incumbents in a position to be included in the bargaining unit while others are not, they worked at different offices and their duties and responsibilities were diverse. Decision here must be made on an individual basis.

All Managers spent significant amounts of time in supervision, but this was mainly technical supervision, not managerial supervision, and was not the type of supervision referred to in s. 1(1)(l)(iii) of Act requiring exclusion from bargaining unit. Only supervision involving a direct impact on the terms and conditions of employment of subordinates amounted to exercise of a managerial capacity.

Two Managers exercised little if any independent discretion and deferred to their own manager in making personnel decisions. Although they had attended some management meetings, they did not do so regularly and they played no meaningful role in decision-making at these meetings. Although they had held their positions for over one year at time of hearing, they had never performed many of management functions attributed to them by Ministry. Thus, they did not spend a significant portion of their time in supervision, as required under s. 1(1)(l)(iii). Although Ministry claimed they had responsibility for responding to grievances at step 1, neither Manager believed he had such authority, and neither had yet been called on to exercise such authority. In absence of evidence that they had real authority to deal with grievances, they should not be excluded under s. 1(1)(l)(iv) of Act. The two Managers were found to be employees under the Act.

A third Manager had been told he had responsibility for managerial supervision and he had actually exercised some of the duties. He had more independent discretion than the first two, but it was still circumscribed and it was not clear he had any real effective control over matters that would require his exclusion from the bargaining unit. Furthermore, he supervised only two experienced and skilled drafters, and general rule that a manager is not required for every small group of employees should prevail since Manager was not isolated nor solely responsible in his office for managerial decision-making. Manager did not fall within s. 1(1)(l)(iii). Nor did he fall within s. 1(1)(l)(iv), as again, there was no evidence of real authority to deal with and resolve a grievance beyond transmitting documents to higher-ups.

Fourth Manager had the greatest scope for independent decision-making. He supervised four employees instead of two, which was still a small group, but he was excluded by virtue of s. 1(1)(l)(iv) because he had actually dealt with several grievances and he had acted as more than a mere conduit, although he had consulted with the personnel department. He had exercised authority to resolve the grievances at step 1 and this made him a managerial employee for purposes of the Act.

UNION: **Amalgamated Transit Union,
Local 1587**

EMPLOYER: **GO Transit**

INDIVIDUAL COMPLAINANT: **Ronald Francis**

TYPE OF APPLICATION/COMPLAINT: **Duty of Fair Representation**

DECISION DATE: **Jan. 19/90**

PANEL: **M. G. Mitchnick
M. Sullivan
W. Madigan**

SUMMARY

DUTY OF FAIR REPRESENTATION - Settlement of discharge grievance without complainant's consent - Failure to arbitrate grievance - Complainant instructed union he would handle his own case - Decision not arbitrary - Section 30

SETTLEMENT - Discharge grievance settled without complainant's consent - Duty of Fair Representation - Section 30

SECTION 30 - Duty of fair representation - Settlement of discharge grievance without complainant's consent - Decision not arbitrary

The complainant joined Go Transit as a bus driver in March, 1985. Contrary to procedure, the complainant failed to turn in money he received for tickets at the end of each shift. From September to December, 1985 he accumulated \$1500 which he used for personal expenses. Complainant admitted his actions to the employer and was discharged and charged criminally.

The union filed a grievance. Members of the union executive met with management, who agreed the employer would try to have the charges dropped if the union agreed not to proceed with the grievance. The complainant rejected this proposal and responded he would handle the matter on his own. The union membership adopted the union executive's recommendation to accept the employer's offer, and the employer was so advised.

The employer acted to have the charges withdrawn. It refused complainant's request to re-open the grievance. The complainant filed a complaint against the union.

The Tribunal adjourned the hearing in 1987 to permit the complainant to pursue the grievance on his own. The Grievance Settlement Board later ruled that the right to proceed was extinguished by the settlement.

Issue was whether union breached duty of fair representation contrary to s.30 by failing to take complainant's discharge to arbitration.

Held: complaint dismissed.

Complainant was responsible for his own actions in advising union he did not want their assistance. In the face of complainant's attitude and all the circumstances, union's refusal to proceed to arbitration was not arbitrary or in bad faith.

UNION: **C.U.P.E. Local 3096**

EMPLOYER: **Ontario Housing Corporation
and All Housing Authorities**

INDIVIDUAL COMPLAINANT: **P. Sauve**

TYPE OF APPLICATION/COMPLAINT: **Employee Status**

DECISION DATE: **July 24/87**

PANEL: **J.H. Devlin
W. Walsh
J.H. McGivney**

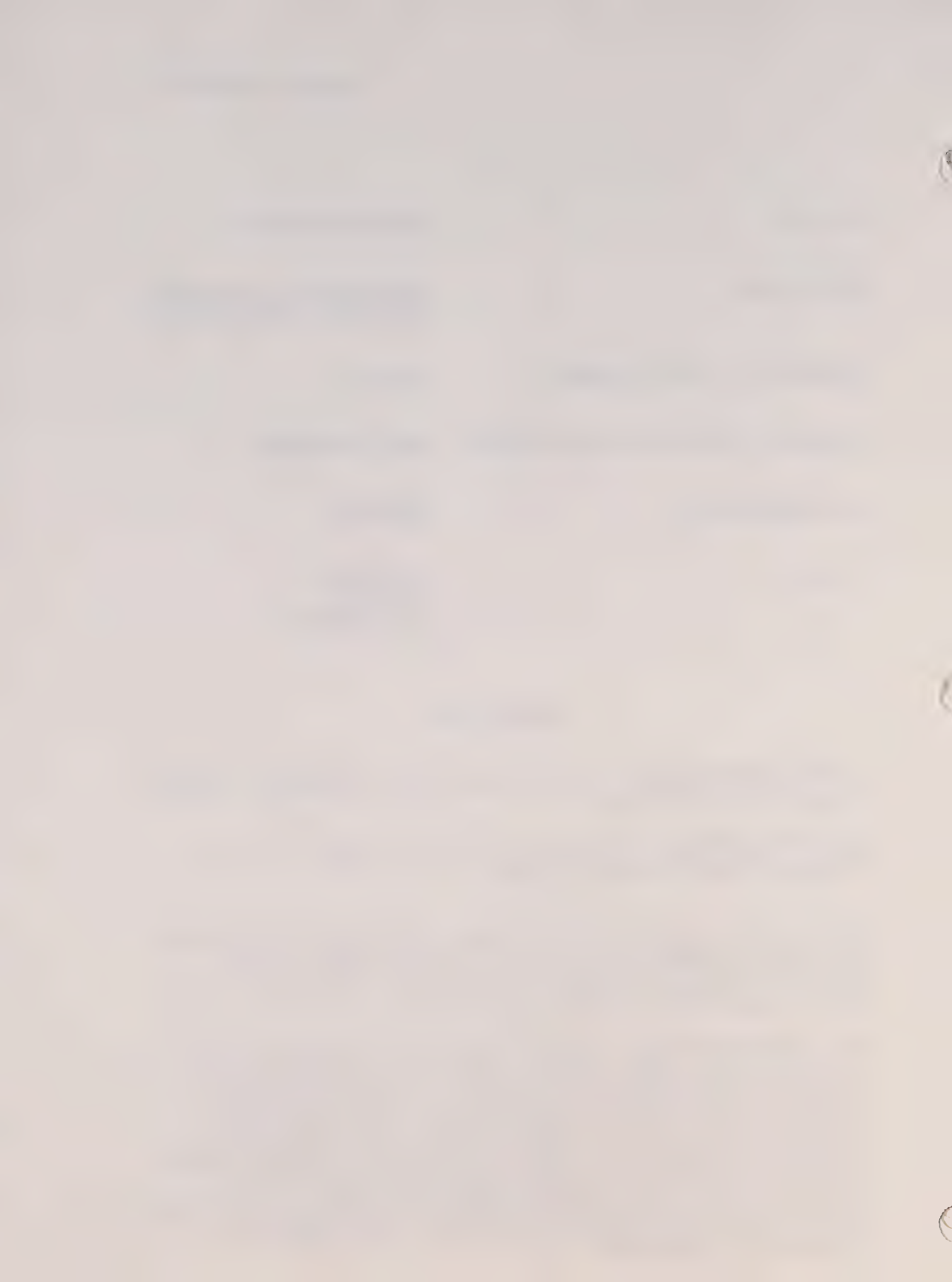
SUMMARY

EMPLOYEE STATUS - Assistant Tenant Placement Manager - Meaning of "supervision" - S.1(1)(l)(iii)

SECTION 1(1)(l)(iii) - Meaning of "supervision" - Employee status of Assistant Tenant Placement Manager

Union claimed Assistant Tenant Placement Manager, was performing functions of bargaining unit job of Administration Officer, Clerk 4. Assistant Manager's position was newly created just before position of Administration Officer, Clerk 4 was eliminated.

Held: Assistant Manager is employed in a managerial capacity and is not an employee under the Act. Assistant Manager does perform some of functions of Administration Officer, Clerk 4, including scheduling, consultation on problem files and preparing L.A.R.C. submissions. But Assistant Manager exercises independent discretion that was never exercised by Administration Officer. Furthermore, Assistant Manager spends substantial amount of time supervising employees and is responsible for discipline and performance evaluation. Assistant Manager does not merely relay predetermined policies and procedures, as Administration Officer did.



UNION: **O.P.S.E.U.**

EMPLOYER: **Ministry of Solicitor General**

INDIVIDUAL COMPLAINANT: **Monica Walker**

TYPE OF APPLICATION/COMPLAINT: **Unfair Labour Practice**

DECISION DATE: **Sept. 23/87**

PANEL: **P.C. Picher
M. Sullivan
J. McGivney**

SUMMARY

DISCRIMINATION - Due to filing of grievance - Intimidation - S.29(2)(a) and (c)

INTIMIDATION - Due to filing of grievance - Discrimination - S.29(2)(a) and (c)

SETTLEMENT - Failure to comply - Failure to destroy documents - Onus of proof - Remedy

SECTION 29(2)(a) - Discrimination due to filing of grievance

SECTION 29(2)(c) - Intimidation due to filing of grievance

Where union raised doubts as to whether documents ordered destroyed in earlier settlement had actually been destroyed, onus shifted to employer to prove they were destroyed. Employer failed to do so, and Tribunal found breach of earlier settlement. Employer was ordered to appear at supplementary hearing and provide proof of destruction.

1880-1881

1882-1883

1884-1885

1886-1887

1888-1889

1890-1891

1892-1893

1894-1895

1896-1897

1898-1899

1900-1901

1902-1903

1904-1905

1906-1907

1908-1909

1910-1911

Co-workers of grievor filed written complaints about her performance six days after she filed sexual harassment grievance against manager. Complaints arose at regular meeting and were not solicited by manager, nor did he encourage co-workers to put complaints in writing. Tribunal found no discrimination or intimidation of grievor by manager.

But where manager who was subject of sexual harassment grievance raised issue of grievor's performance at meeting, although there was no urgent safety reason to do so, and asked co-workers to document any problems for purpose of trying to get grievor fired, this was discrimination and intimidation contrary to s.29(2)(a) and (c) of Act.

UNION: **O.P.S.E.U.**

EMPLOYER: **Ministry of Solicitor General**

INDIVIDUAL COMPLAINANT: **Monica Walker**

TYPE OF APPLICATION/COMPLAINT: **Unfair Labour Practice;
Supplementary**

DECISION DATE: **June 27/89**

PANEL: **P.C. Picher
M. Sullivan
J. McGivney**

SUMMARY

PROCEDURE - Affidavits - Order to file affidavits detailing compliance with earlier order to destroy documents - Whether affidavits sufficient

SETTLEMENT - Failure to comply - Failure to destroy documents - Whether affidavits in accord with Tribunal's earlier order

After earlier hearing, Tribunal had directed employer to file affidavits dealing with disposition of originals and copies of documents ordered destroyed at initial hearing. Union claimed affidavits filed did not comply with Tribunal's order.

Held: affidavits were satisfactory. Given union's failure to raise issues at earlier hearing with regard to two individual's possession of documents, Tribunal's direction was general in scope, and affidavits from those two individuals were not required. General affidavit detailing inquiries made and steps taken were sufficient to comply with Tribunal's order. Union's request for further information went beyond scope of Tribunal's order.

UNION: **C.U.P.E. Local 3096**

EMPLOYER: **Ontario Housing Corporation
and All Housing Authorities**

INDIVIDUAL COMPLAINANT: **--**

TYPE OF APPLICATION/COMPLAINT: **Bargaining Authority**

DECISION DATE: **December 30/87**

PANEL: **M.G. Mitchnick
J. McGivney
E. Witthames**

SUMMARY

CLASSIFICATION SYSTEM - Bargaining proposals - Aspects subject to bargaining - Management rights - Ss.7 and 18(1)

JOB EVALUATION SYSTEM - Bargaining proposals - Aspects subject to bargaining - Management rights - Ss.7 and 18(1)

SECTION 7 - Bargaining proposals on job evaluation and classification system - Aspects subject to bargaining - Management rights - S.18(1)

SECTION 18(1) - Bargaining proposals on job evaluation and classification system - Aspects subject to bargaining - Management rights - S.7

Union proposed joint job evaluation committee to develop new job evaluation program. Employer claimed that parts of proposal dealing with preparing job descriptions and applying system to jobs to determine classification were exclusive management functions under s. 18(1) of Crown Employees Collective Bargaining Act. Union claimed it had right to bargain on these matters due to s. 7 of Act, which gives right to bargain about classification and job evaluation system. Parties applied under s. 40(2) to settle question as to bargaining authority.

Held: reasoning in 1979 decision of C.U.P.E. and O.P.S.E.U. and Ontario Housing Corp. (T/7/78 and T/9/78) still applies. Union may bargain about individual job descriptions but it is then management's exclusive right to apply bargained-for classification system to jobs to determine classifications. Case of C.U.P.E. and Workers Compensation Board (T/40A/84) was a special case where, because of past conduct, Tribunal held that union could participate in classification process, but this is not the general rule.

In this case, union was entitled to negotiate on drawing job descriptions, the classification system to be used and the machinery for administering it, and the rates of pay. Management had the exclusive right to determine job content prior to job descriptions being drawn, and to apply classification system to positions.

UNION: **O.P.S.E.U.**

EMPLOYER: **Ministry of Health**

INDIVIDUAL COMPLAINANT: **---**

TYPE OF APPLICATION/COMPLAINT: **Unfair Labour Practice**

DECISION DATE: **July 3/87**

PANEL: **M.G. Mitchnick
D. Bonazzo
J.H. McGivney**

SUMMARY

JURISDICTION OF TRIBUNAL - Unfair labour practice - Interpretation of collective agreement in dispute

UNFAIR LABOUR PRACTICE - Tribunal jurisdiction where interpretation of collective agreement in dispute

Union filed unfair labour practice complaint. Employer's actions were based on disputed interpretation of collective agreement, and employer claimed union should file grievance as to interpretation, not unfair labour practice complaint.

Held: questions as to representation rights and alleged employer interference with those rights are fundamentally within Tribunal's jurisdiction. Matter should proceed.

UNION: **O.P.S.E.U.**

EMPLOYER: **Ministry of Health**

INDIVIDUAL COMPLAINANT: **---**

TYPE OF APPLICATION/COMPLAINT: **Unfair Labour Practice**

DECISION DATE: **Dec. 2/87**

PANEL: **M.G. Mitchnick
D. Bonazzo
J.H. McGivney**

SUMMARY

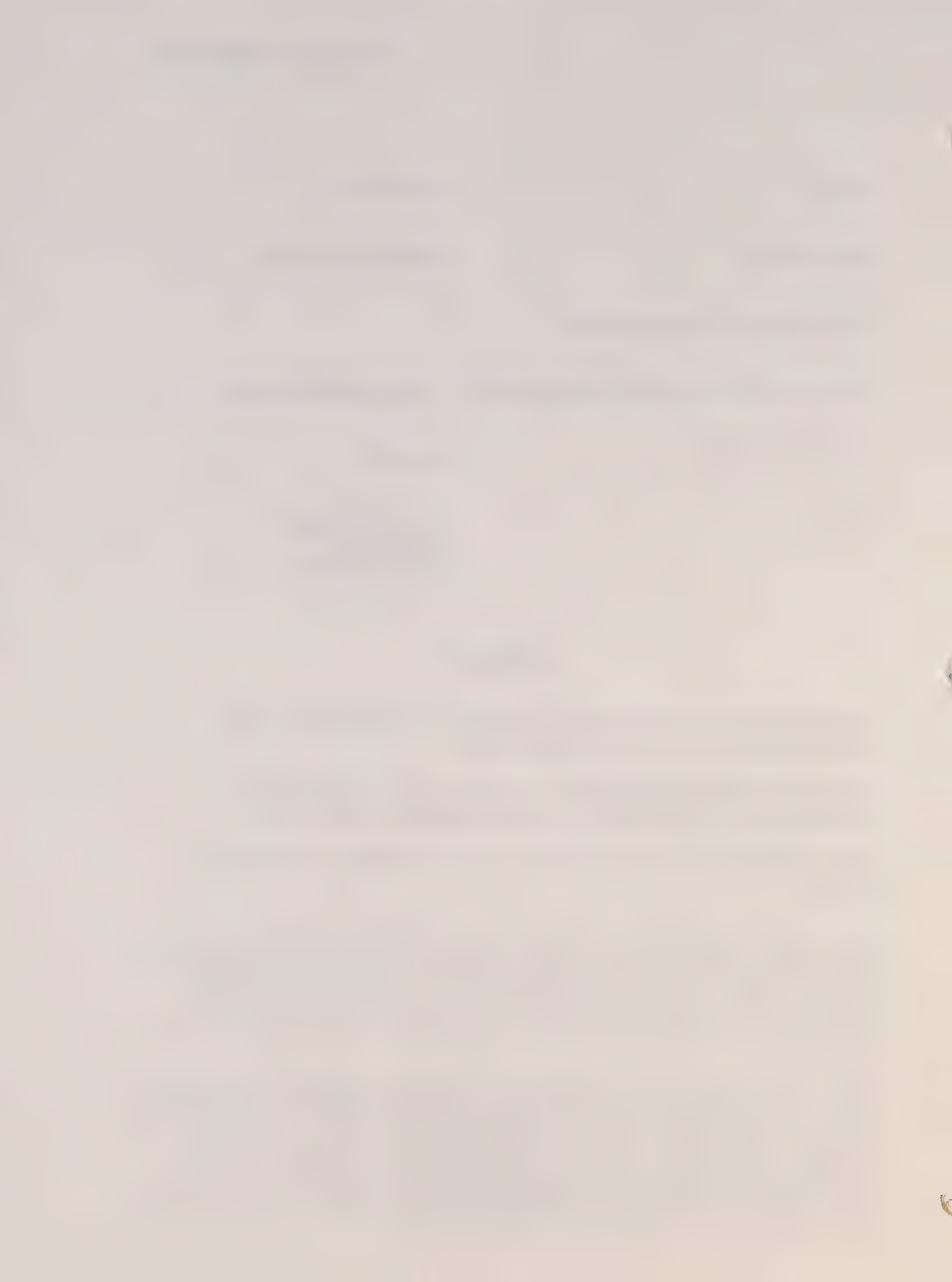
INTERFERENCE WITH UNION - Employer dealing directly with employees to extend grievance time limits

UNFAIR LABOUR PRACTICE - Employer interference with union - Dealing directly with employees to extend grievance time limits

SECTION 29(1) - Interference with union - Importance of employer's intention

After union refused extension of time limits for dealing with large number of classification grievances, employer sought consent from individual grievors. Union claimed this was unfair labour practice under s.29(1), because it was unlawful interference with union's relationship with its members.

Held: complaint dismissed. Employer was acting in good faith on basis of genuine disagreement as to meaning of collective agreement clause giving grievors some control over own grievances at early stages. Although union's interpretation of agreement was correct, and employer was not entitled to deal directly with employees on administration of grievances, employer had not intended to interfere, and in fact ceased its efforts as soon as it learned how seriously union regarded the matter.



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| UNION: | O.P.S.E.U. |
| EMPLOYER: | Ministry of Government Services |
| INDIVIDUAL COMPLAINANT: | James Glenney and Les Gondor |
| TYPE OF APPLICATION/COMPLAINT: | Unfair Labour Practice/ Duty of Fair Representation (Interim Decision) |
| DECISION DATE: | Mar. 30/89 |
| PANEL: | M. Mitchnick K. McDonald J. McGivney |

SUMMARY

ADJOURNMENT - To obtain legal counsel for complainants - Granted

PROCEDURE - Adjournment - To obtain legal counsel

PROCEDURE - Legal counsel - Whether complainants' counsel to be paid by union and employer

PROCEDURE - Preliminary rulings - Whether Tribunal should make where adjournment granted to obtain legal counsel

REMEDY - Legal counsel for complainants - Whether counsel to be paid by union and employer

Issue was request for adjournment by complainants to obtain legal counsel to be paid for by the Union and Employer.

Held: adjournment granted.

Tribunal granted adjournment to provide complainants opportunity to consider retaining legal counsel, and to retain legal counsel if they so decided, given complexity and the late stage at which union clarified its position on providing legal representation.

Prior to full litigation the Tribunal was unable to determine whether it could or should order opposing parties to pay for complainants' legal counsel.

Tribunal declined to rule with respect to any of respondents' motions in light of earlier ruling.

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| UNION: | O.P.S.E.U. |
| EMPLOYER: | Ministry of Government Services |
| INDIVIDUAL COMPLAINANT: | James Glenny and Les Gondor |
| TYPE OF APPLICATION/COMPLAINT: | Unfair Labour Practice/ Duty of Fair Representation (Interim Decision) |
| DECISION DATE: | Mar. 13/90 |
| PANEL: | J. H. Devlin M. Sullivan C. Boettcher |

SUMMARY

DUTY OF FAIR REPRESENTATION - Application - Whether applies to internal union affairs - Tribunal's jurisdiction under s.30

INTERFERENCE WITH UNION - Complaint against union - Whether s.29(1)(2) supports a complaint against union

JURISDICTION OF TRIBUNAL - Duty of fair representation - Internal union affairs - Scope of s.30

JURISDICTION OF TRIBUNAL - Procedure - Witnesses - Payment of conduct money

PROCEDURE - Witnesses - Payment of conduct money - Tribunal's jurisdiction

PROCEDURE - Particulars - Particularizing complaint by providing names, times, material facts, location

PROCEDURE - Production of documents referred to in complaints

SECTION 29(1) - Interference with union - Complaint against union - Whether s.29(1) or (2) supports a complaint against union

SECTION 29(2) - Interference with union - Complaint against union - Whether s.29(1) or (2) supports a complaint against union

SECTION 30 - Duty of fair representation - Scope - Whether applies to internal union affairs

Preliminary issues were whether alleged conduct of employer and union could constitute a violation of ss. 29 & 30, and the Tribunal's jurisdiction to direct payment of conduct money.

The complainants were members of the executive of Local 508. The employer moved members of the executive to a location represented by Local 520. The union President ruled that employees who transferred came within the jurisdiction of Local 520. The complainants alleged that the union breached the duty of fair representation, and that the employer and union acted in concert to undermine the executive of Local 508. They also alleged that the employer was improperly involved in the circulation of two petitions relating to the affairs of the Local.

Held: complaints against union dismissed. Complaints against employer to proceed on merits. Tribunal has jurisdiction to direct payment of conduct money.

Sections 29(1) and (2) relating to interference with an employee organization and with employee rights cannot support a complaint against the union. The complainants did not allege the union acted on behalf of the employer, and they would not be permitted to subsequently amend the complaint. Tribunal proceedings are not to be used as a fishing expedition.

The duty of fair representation in s.30 relates to the representation of employees vis-a-vis the employer, not to internal union affairs. The union President's ruling is an internal matter over which the Tribunal has no jurisdiction. The allegations against the employer with respect to the transfer of employees and the circulation of petitions, if proven, could constitute a violation of s.29 over which the Tribunal has jurisdiction.

Complainants were ordered to particularize the complaint relating to the employer's involvement in circulating petitions by providing names, material facts, approximate times and locations, and to provide employer with the relevant documentation referred to in the complaint.

Complainants served summonses but did not pay conduct money. Tribunal ruled that it had jurisdiction to direct payment. Complainants were directed to pay conduct money to individuals who attended at hearing, but not to individual who remained on call but did not attend.

UNION: **O.P.S.E.U.**

EMPLOYER: **Ministry of Community & Social Services**

INDIVIDUAL COMPLAINANT: **A. Lasani**

TYPE OF APPLICATION/COMPLAINT: **Employee Status**

DECISION DATE: **May 2/89**

PANEL: **M.G. Mitchnick
D. Bonazzo
J. McGivney**

SUMMARY

EMPLOYEE STATUS - Supervisor of Rehabilitation & Employment Programs - Whether managerial - Sections 1(1)(l)(iii) and (iv)

EMPLOYEE STATUS - Managerial exclusions - Principles - Supervisor of Rehabilitation & Employment Programs - Sections 1(1)(l)(iii) and (iv)

SECTION 1(1)(l)(iii) - Managerial exclusions - Principles - Supervisor of Rehabilitation & Employment Programs - Section 1(1)(l)(iv)

SECTION 1(1)(l)(iii) - Supervisor of Rehabilitation & Employment Programs - Managerial exclusions - Principles - Section 1(1)(l)(iv)

SECTION 1(1)(l)(iv) - Managerial exclusions - Principles - Supervisor of Rehabilitation & Employment Programs - Section 1(1)(l)(iii)

SECTION 1(1)(l)(iv) - Supervisor of Rehabilitation & Employment Programs - Managerial exclusions - Principles - Section 1(1)(l)(iii)

Employee disputed job posting decision for position of Supervisor of Rehabilitation & Employment Programs, and employer then claimed position was excluded as managerial. Grievance Settlement Board referred matter to Tribunal to determine employee status of position.

Held: position was managerial.

Tribunal should determine real issue between parties, which was status of position at time of disputed decision, and should not be limited to assessing status of position as of date of application to Tribunal. As practical matter, evidence of incumbent was accepted as to position's duties and responsibilities.

Position had existed and been treated as excluded for many years. Current supervisor oversaw performance of six Vocational and Rehabilitation Counsellors reporting to her, and carried no caseload of her own. She provided more than just professional assistance in a collegial atmosphere, and retained authority even though she rarely exercised it because organization ran smoothly. She made independent employment judgments about staff working under her, at least to the point of effective recommendation to her manager. She also administered collective agreement on a day-to-day basis and was required to formally reply to Step 1 grievances. Fact that she had not exercised some of these responsibilities did not detract from claim, given employer's historically consistent position. She was a managerial employee within ss. 1(1)(l)(iii) and (iv) of Act.

Fact that two new levels of management had been added since supervisory position was first created did not detract from position's responsibilities, given growth in jurisdiction and staff complement.

UNION: O.P.S.E.U.

EMPLOYER: Ministry of
Transportation and
Communications

INDIVIDUAL COMPLAINANT: Tymen Evink

TYPE OF APPLICATION/COMPLAINT: Religious Objection

DECISION DATE: Jan. 12/88

PANEL: J.H. Devlin
W.J. Walsh
J.H. McGivney

SUMMARY

RELIGIOUS OBJECTION - Canadian Reform Church - Exemption allowed

SECTION 16(2) - Religious objection to union dues - Canadian Reform Church -
Exemption allowed

Exemption allowed for member of Canadian Reform Church on basis of teachings to honour those above him, including employer, and not to challenge authority of employer. Despite three years' union membership without challenge, applicant only became aware of teachings when he became a confession member of church. Previous grievance was filed to obtain information, not to challenge employer's authority. Applicant's religious beliefs were sincerely held, and sufficient nexus was shown under s.16(2).

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| UNION: | O.P.S.E.U. |
| EMPLOYER: | Ministry of the Attorney General |
| INDIVIDUAL COMPLAINANT: | -- |
| TYPE OF APPLICATION/COMPLAINT: | Employee Status |
| DECISION DATE: | Dec. 20/89 |
| PANEL: | P.C. Picher J.H. McGivney K. McDonald |

SUMMARY

EMPLOYEE STATUS - Sheriff's officers ("fee officers") - Whether employees or independent contractors - Tests to be applied - Section 1(1)(f)

Issue was whether sheriff's officers ("fee officers") were employees within s. 1(1)(f) of the Act or were independent contractors. Fee officers performed process serving work and/or enforcement work.

Held: Sheriff's officers were employees.

Tribunal considered and applied main tests to distinguish employees from independent contractors. Fee officers were found to be employees based on: control over manner of work; minimal presence of chance of profit or risk of loss; lack of entrepreneurial activity; historical attachment to sheriff's office; lack of freedom to accept or reject work; fact that fees were set by regulation or by the sheriff; high degree of integration into the sheriff's office business; and the fact that process serving is the sheriff's office's business.

UNION: **O.P.S.E.U.**

EMPLOYER: **Ministry of Health**

INDIVIDUAL COMPLAINANT: **S. Silverthorne**

TYPE OF APPLICATION/COMPLAINT: **Employee Status**

DECISION DATE **May 20/88**

PANEL: **M.G. Mitchnick
W. Walsh
W. Wright**

SUMMARY

BURDEN OF PROOF - Employee status application - Section 40(1)

EMPLOYEE STATUS - Burden of proof - Party proceeding first - Section 40(1)

EMPLOYEE STATUS - Effect of parties' past practice

PROCEDURE - Employee status application- Section 40(1) - Party proceeding first

SECTION 40(1) - Employee status application - Burden of proof - Party proceeding first

SECTION 1(1)(F) - Employee status application - Burden of proof - Procedure

In applications to determine employee status, person asserting employee is a Crown employee has initial burden of proof, since Act only applies to Crown employees. Person seeking to prove an employee otherwise within Act's scope falls within an exception in s. 1(1)(f) has burden of proving exception. "Evidentiary burden" may nevertheless shift to party other than one that has legal burden of proof. Lengthy

history of parties accepting one status or another relates to evidentiary burden, and will likely be persuasive in absence of compelling evidence to contrary.

Tribunal should adopt OLRB's practice where there is dispute in proceedings under s. 40(1). Tribunal may ask person whose position is in dispute to start the evidence, and may initiate questioning. Applicant and respondent, in turn, may then cross-examine, and may proceed to call their own witnesses.

UNION: **O.P.S.E.U.**

EMPLOYER: **Ministry of Health**

INDIVIDUAL COMPLAINANT: **L. Silverthorne**

TYPE OF APPLICATION/COMPLAINT: **Employee Status**

DECISION DATE: **July 27/89**

PANEL: **M.G. Mitchnick
W. Walsh
W. Wright**

SUMMARY

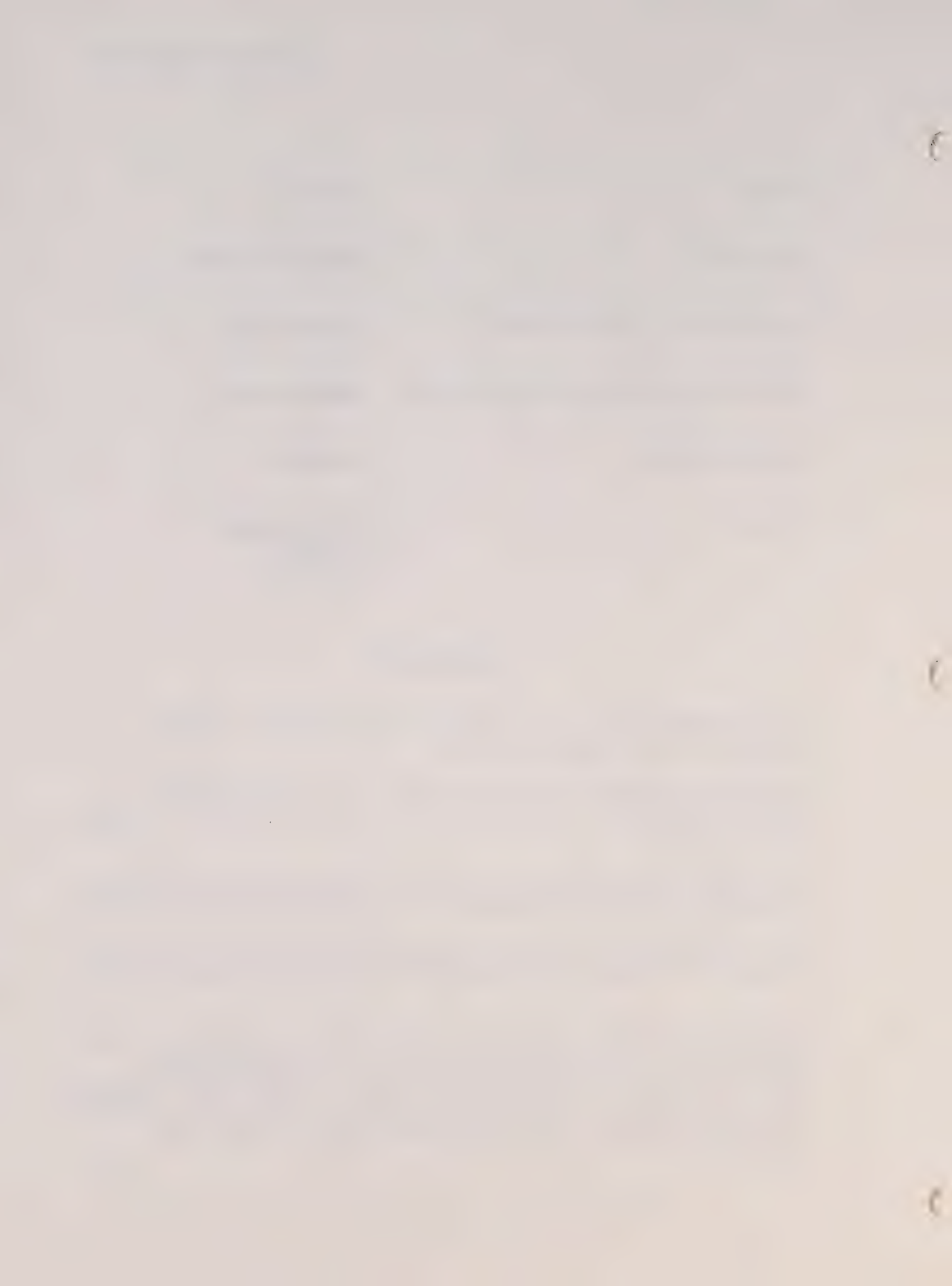
EMPLOYEE STATUS - Dealing formally with grievances - Extent of authority required - Section 1(1)(l)(iv)

EMPLOYEE STATUS - Supervisor, Clinical Stenographic Services - Whether managerial - Whether dealing formally with grievances - Sections 1(1)(l)(iii) and (iv)

SECTION 1(1)(l)(iii) - Supervisor, Clinical Stenographic Services - Whether managerial - Whether dealing formally with grievances - Section 1(1)(l)(iv)

SECTION 1(1)(l)(iv) - Supervisor, Clinical Stenographic Services - Whether managerial - Whether dealing formally with grievances - Section 1(1)(l)(iii)

Employee held position of Supervisor, Clinical Stenographic Services and reported to the Director, Clinical Services at St. Thomas Psychiatric Hospital. After many years in the bargaining unit, position was reclassified into the Management Compensation Plan. Employer relied on ss. 1(1)(l)(iii) and (iv) to justify claim that this first-line supervisor's position was managerial.



Held: position was managerial and should be excluded from the bargaining unit.

Regarding s. 1(1)(l)(iii), employee had taken over extra duties since changes in duties of her supervisor. In addition to day-to-day supervision of 12 employees, she performed appraisals, approved overtime and issued verbal warnings, which was only level of discipline necessary to date.

Regarding s. 1(1)(l)(iv), requirement of "formally" dealing with grievances requires both ostensible and real authority to deal with or negotiate on grievances with independent discretion. Employee here had such authority and had dealt with at least one grievance with advice from personnel. Section does not require that person make the decision at the final stage of the grievance procedure.

UNION: O.P.S.E.U.

EMPLOYER: Ministry of Health

INDIVIDUAL COMPLAINANT: P. Del Kriticos

TYPE OF APPLICATION/COMPLAINT: Religious Objection

DECISION DATE: Mar. 7/88

PANEL: J.H. Devlin
W. Walsh
R. Drennan

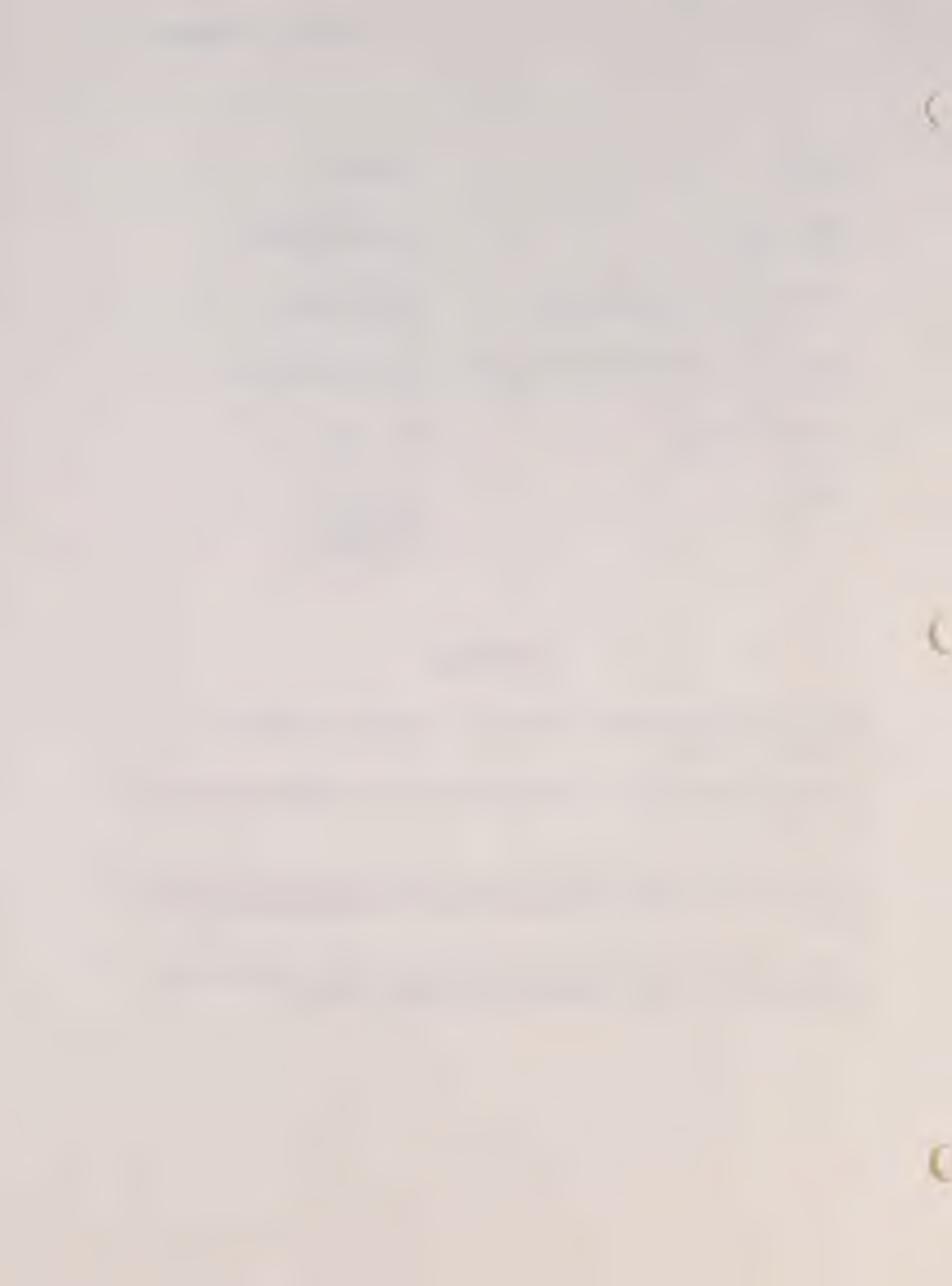
SUMMARY

RELIGIOUS OBJECTION - Union dues - Seventh Day Adventist -
Exemption allowed

SECTION 16(2) - Religious objection to union dues - Seventh Day Adventist -
Exemption allowed

Seventh Day Adventist objected to paying union dues on basis of church and biblical teaching, on ground injustices should be redressed by God, not unions.

Held: exemption allowed. Sufficient nexus found under s.16(2) between religious convictions and objection to union dues payment.



UNION: **O.P.S.E.U.**

EMPLOYER: **Ministry of Government Services**

INDIVIDUAL COMPLAINANT: **--**

TYPE OF APPLICATION/COMPLAINT: **Unfair Labour Practice**

DECISION DATE: **Jul. 12/88**

PANEL: **M. Mitchnick
W. Walsh
J. McGivney**

SUMMARY

JURISDICTION OF TRIBUNAL - Unfair labour practice complaint -
Deferral of Tribunal to arbitration process

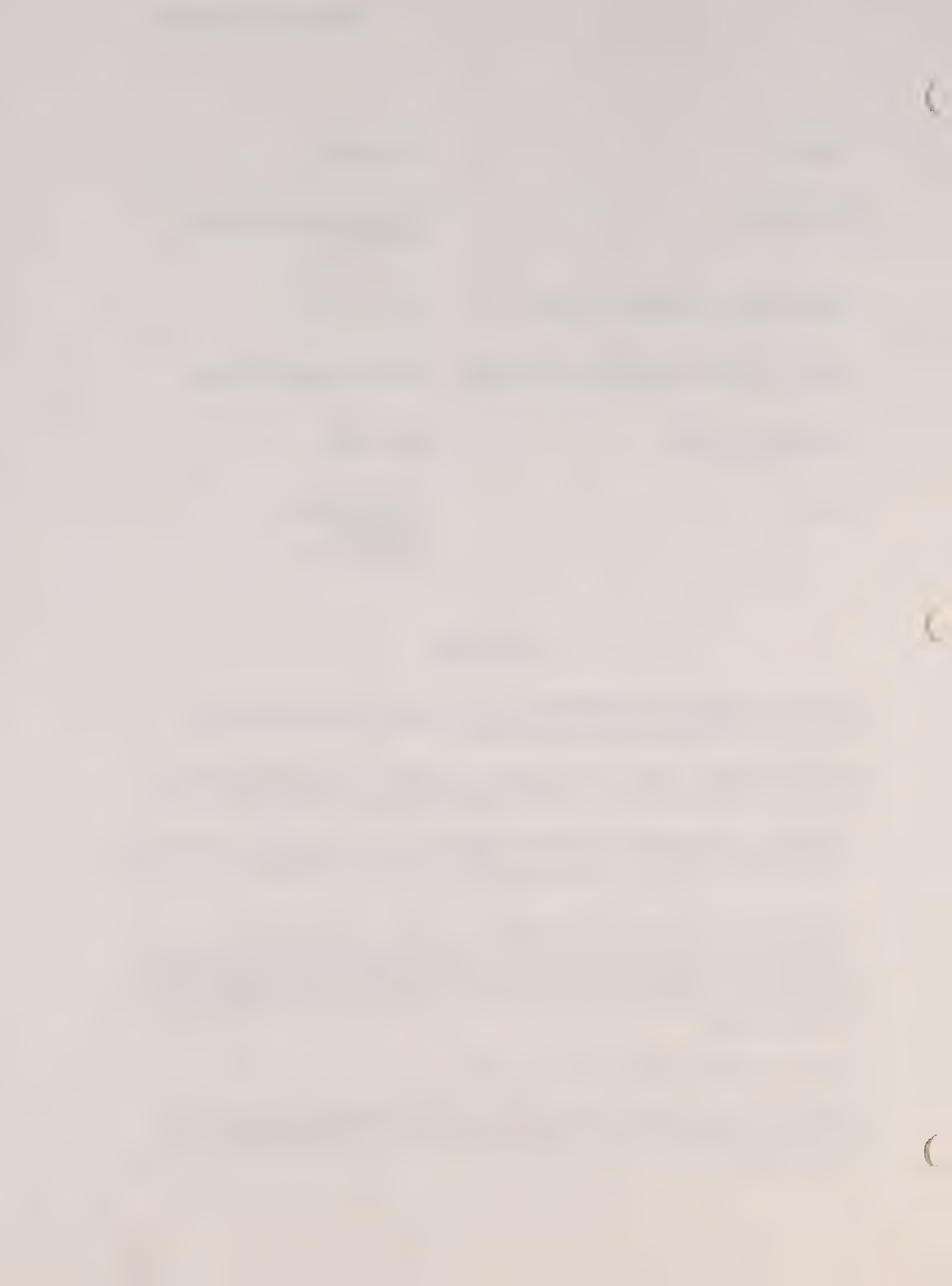
PROCEDURE - Unfair labour practice complaint - Form of complaint -
Deferral of Tribunal to arbitration process - O. Regs. 232 and 233

UNFAIR LABOUR PRACTICE - Complaint procedure - Form of complaint
- Deferral of Tribunal to arbitration process - O. Regs. 232 and 233

Employer raised preliminary objections to unfair labour practice complaint, claiming complaint did not make out a prima facie violation of the Act, and the matters were the subject of a grievance and the Tribunal should defer to the arbitration process until such time as it might be shown to be inadequate.

Held: preliminary objections dismissed.

Employer relied on the Notes in the Form of Complaint under Reg. 232. These requirements were important for fairness and to expedite matters and enhance



disclosure. But even though complaint here was not as explicitly drafted as it might have been, s. 42 of Reg. 233 provided that a proceeding should not be invalid due to defects in form.

Complaint sufficiently made out a prima facie case, along with complainant's argument at hearing, with exception of allegation that one employee was told he would have to transfer due to redundancy. No nexus was made out between the transfer and the on-going dispute between the parties. As this matter was the subject of grievance proceedings and was not related to the unfair labour practice complaint, this paragraph should be ignored.

Other allegations were fundamentally different from the grievance proceedings that were the subject of the on-going dispute, so deferral to arbitration process would not provide an adequate remedy. Tribunal therefore accepted jurisdiction over those matters, despite potential for some overlap between the proceedings. Parties were invited to address this aspect of proceedings between themselves.

Amendment of complaint to include reference to practice of union representation, which was assumed but not stated in complaint as drafted, was ordered. Although union sought to amend the complaint to add a new incident not referred to in original complaint, it was allowed to do so, since it was free to file a separate complaint with respect to that matter and it would be better to have all issues dealt with at one time.

UNION: **O.P.S.E.U.**

EMPLOYER: **Ministry of Labour**

INDIVIDUAL COMPLAINANT: **--**

TYPE OF APPLICATION/COMPLAINT: **Employee Status**

DECISION DATE: **May 8/89**

PANEL: **J.H. Devlin
M. Sullivan
R.W. Redford**

SUMMARY

BURDEN OF PROOF - Employee status application - Evidentiary onus - Effect of status quo

EMPLOYEE STATUS - Occupational Health and Safety Advisors - Whether conflict of interest between duties and union membership - Scope of omnibus exclusion in s. 1(1)(l)(viii)

EMPLOYEE STATUS - Omnibus exclusion in s. 1(1)(l)(viii) - Scope - Occupational Health and Safety Advisors

EMPLOYEE STATUS - Onus of proof - Evidentiary onus - Effect of status quo

EMPLOYEE STATUS - Procedure - Order of examination of witnesses

PROCEDURE - Examination of witnesses - Employee status application

SECTION 1(1)(l)(viii) - Scope of omnibus exclusion - Occupational Health and Safety Advisors - Whether conflict of interest between duties and union membership

SECTION 40(1) - Burden of proof - Employee status application - Evidentiary onus - Effect of status quo



Issue was whether Occupational Health and Safety Advisors should be excluded under omnibus clause of s. 1(1)(l)(viii). Preliminary issues arose as to procedure, effect of status quo, and onus of proof.

Held: employees should be excluded from bargaining unit.

Tribunal adopted procedure detailed in Silverthorne (T/0030/87) by initiating questioning of persons whose status was in issue, then allowing both employer and union to cross-examine. Given that union was challenging status quo of six-year exclusion, union was required to proceed first in its cross-examination.

Employer had legal onus of proof, as it was claiming an exclusion under s. 1(1)(l). Status quo of historical exclusion affects evidentiary burden only where there is evidence that there was some shared understanding concerning status of persons in issue. As there was no such evidence here, status quo was not particularly significant and there was no evidentiary onus on union to demonstrate the need for a change.

Omnibus exclusion gives Tribunal a broad discretion, but basis for exclusion under this section must be similar in nature to other managerial or confidential exclusions under s. 1(1)(l). Tribunal should be no less rigorous in applying this exclusion, and here a real likelihood of conflict of interest must be shown, not just a possibility.

Advisors acted mainly as neutral third-party mediators in a voluntary service. Their ability to gain the trust and confidence of both labour and management was crucial, and they often had to resolve general labour relations issues related to health and safety issues. Affiliation of advisors with either labour or management could affect parties' perception of their neutrality and impair parties' confidence in the service. For this reason, advisors should be excluded from bargaining unit under s. 1(1)(l)(viii) by reason of their duties and responsibilities to the employer.

UNION: **O.P.S.E.U.**

EMPLOYER: **Ministry of Transportation**

INDIVIDUAL COMPLAINANT: **A. Maghsoudi**

TYPE OF APPLICATION/COMPLAINT: **Unfair Labour Practice/ Duty of Fair Representation**

DECISION DATE: **Dec. 2/88**

PANEL: **J.H. Devlin
M.J. Sullivan
J.H. McGivney**

SUMMARY

DISCRIMINATION - Actions constituting - Whether breach of Act - Section 37(1)

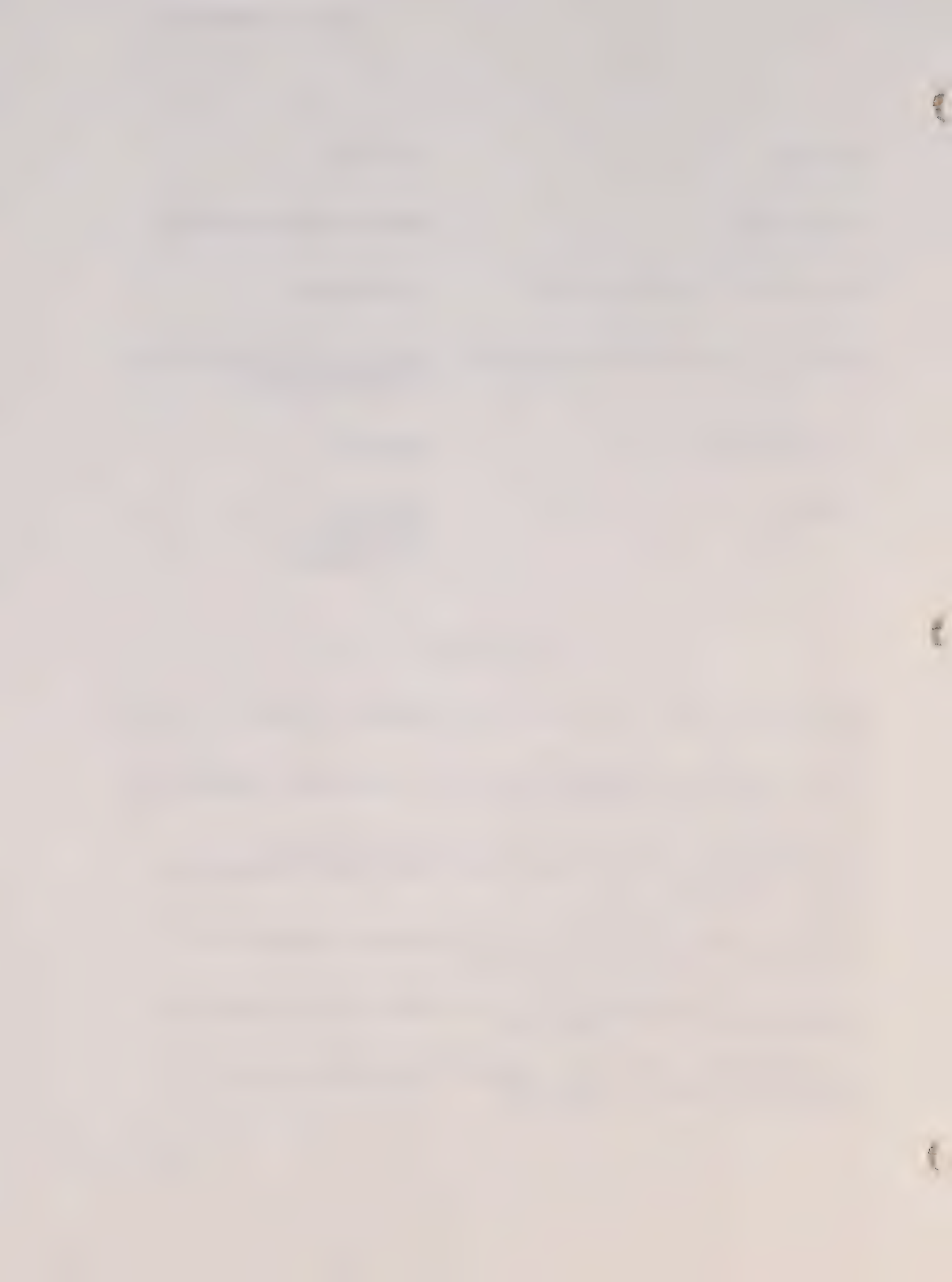
DUTY OF FAIR REPRESENTATION - Delay - Complaints dismissed due to lengthy delay without compelling reason

PROCEDURE - Delay - Unfair labour practice and duty of fair representation complaints - Complaints dismissed due to lengthy delay without compelling reason

UNFAIR LABOUR PRACTICE - Delay - Complaints dismissed due to lengthy delay without compelling reason

UNFAIR LABOUR PRACTICE - Discrimination - Actions constituting - Whether breach of Act - Section 37(1)

SECTION 37(1) - Unfair labour practice - Discrimination - Actions constituting - Whether breach of Act



Complainant complained under s. 37(1) against employer, alleging discrimination. Complaint claimed employer undermined his accomplishments, failed to recognize his achievements, gave credit to other employees for his work, assigned his work to others, failed to make use of his skills, and improperly transferred him and declared him surplus in order to advance management favourites.

As against the union, he claimed a breach of the duty of fair representation under s. 30 of the Act, claiming union was passive, impotent or conspiratorial in failing to deal with his concerns about a persistent pattern of discrimination by the employer.

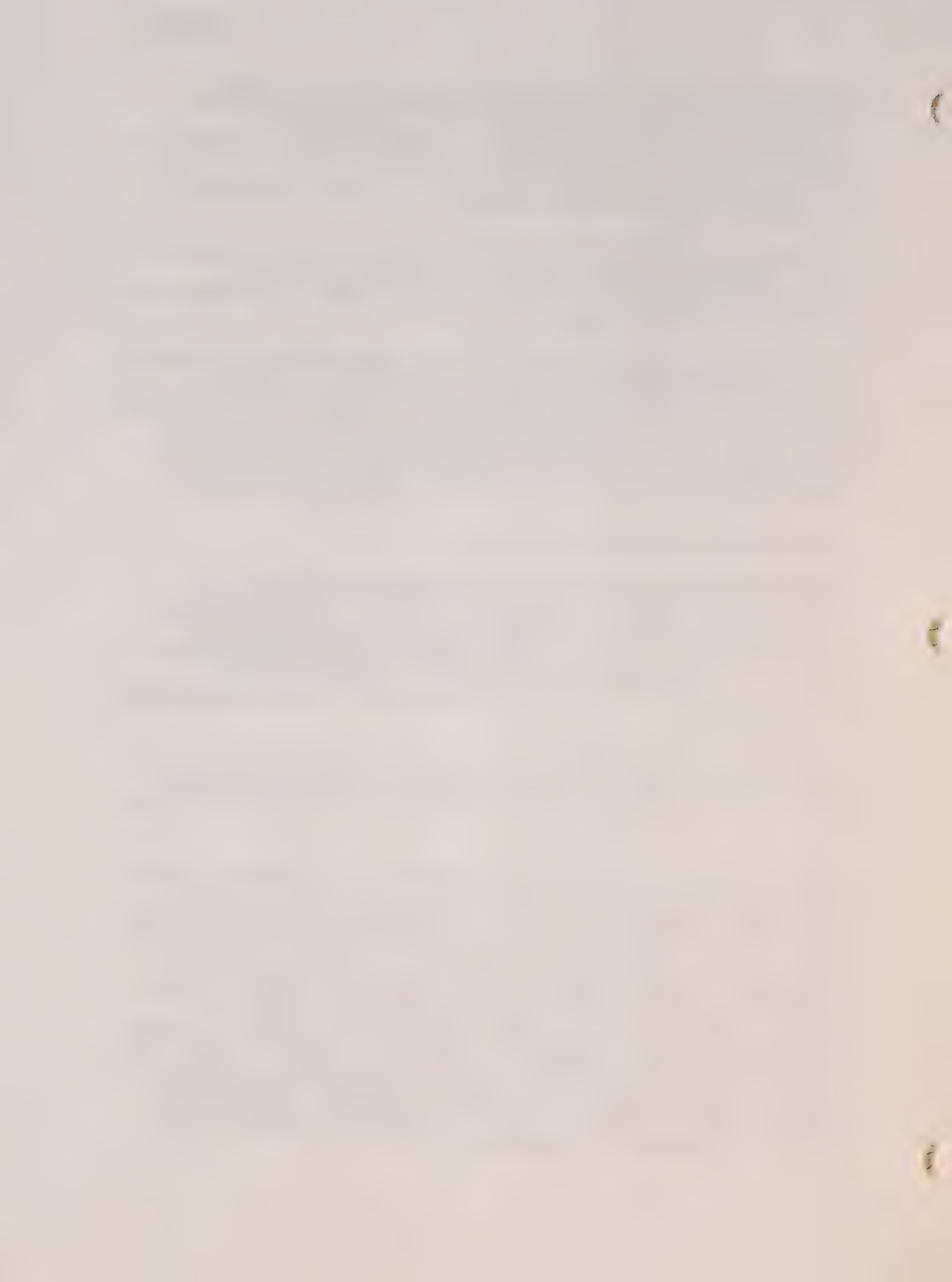
Events concerned took place between 1972 and 1987, at least one year before the filing of the complaint, and employer sought to have complaint dismissed due to delay. Employer also sought to strike those allegations that did not relate to a violation of the Act and to require the complainant to provide particulars. Union also sought to have complaint dismissed on ground of delay, as events covered period from 1982 to 1985. Union also sought particulars.

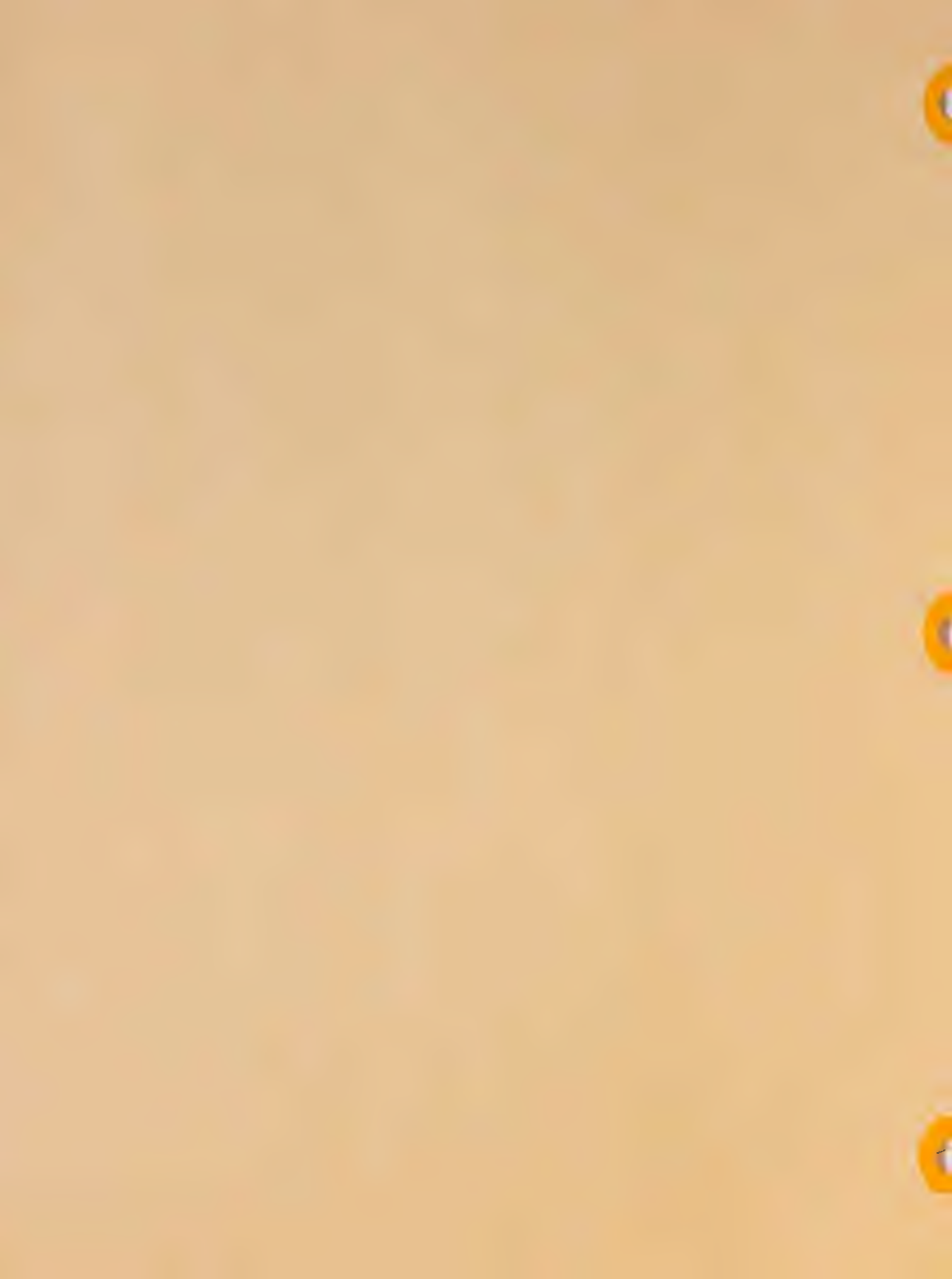
Held: complaints dismissed due to delay.

Complainant complained about an investigation by the Office of the Ombudsman and about the resolution of a grievance before the Grievance Settlement Board. However, Tribunal did not have the jurisdiction to inquire into these matters. Nor did Tribunal have unlimited jurisdiction to inquire into discrimination in the workplace, only discrimination prohibited by the Act. Tribunal is not a forum of last resort, as suggested by the complainant.

Most of allegations by complainant do not involve any violation of the Act, merely general allegations of discrimination due to activities he claims hampered his career development. These activities were not a violation of s. 37(1).

Some allegations involved alleged retaliation due to the filing of grievances. While these could be the subject of a complaint under the Act, the final incident that could be a violation of the Act occurred in January 1985. Other alleged violations occurred as long ago as 1979. Tribunal should consider factors similar to the Ontario Labour Relations Board's approach to the issue of delay, including the length of the delay and the reasons for it. In this case, the delay was at least three years, and no explanation was offered, although there was a suggestion he hoped he would be transferred to another work area. This might justify a delay for some reasonable period, but could not justify a delay of this magnitude. Case would clearly turn on credibility, and respondents would both be prejudiced in responding to complaints due to the passage of time, so that a fair hearing could not be conducted. Complaints were dismissed.





UNION: --

EMPLOYER: **Ministry of Correctional
Services**

INDIVIDUAL COMPLAINANT: **P. Kiviloo**

TYPE OF APPLICATION/COMPLAINT: **Unfair Labour Practice**

DECISION DATE: **Nov. 4/88**

PANEL: **M. Mitchnick
M. Sullivan
J. McGivney**

SUMMARY

INTERFERENCE WITH UNION - Lack of union representation - Remedies
- Proper forum - Section 29(1)

JURISDICTION OF TRIBUNAL - Interference with union - Lack of union
representation - Remedies - Proper forum - Section 29(1)

PROCEDURE - G.S.B. hearing pending - Alleged interference with union -
Lack of union representation - Remedies - Proper forum - Section 29(1)

PROCEDURE - Unfair labour practice - G.S.B. hearing pending - Alleged
interference with union - Lack of union representation - Remedies - Proper
forum - Section 29(1)

UNFAIR LABOUR PRACTICE - Interference with union - Lack of union
representation - G.S.B. hearing pending - Remedies - Proper forum -
Section 29(1)

SECTION 29(1) - Interference with union - Lack of union representation -
Remedies - Proper forum

Grievor alleged breach of s. 29(1) of Act due to alleged failure to allow him union representation at a meeting at which he was terminated. Grievor had grieved the discharge and was represented by union counsel before the Grievance Settlement Board, which had not yet concluded its hearing. Grievor sought reinstatement in both G.S.B. and Tribunal proceedings.

Held: matter deferred pending the G.S.B.'s decision.

Procedural fairness is an element in a discharge case, but it is only one element. Even if Tribunal had power to reinstate for a breach of the Act, it would be difficult and perhaps unfair for the Tribunal to decide on the appropriate remedy in the absence of the full context of the discharge case. All these matters could be dealt with at arbitration, and that was the proper forum to deal with matter.

UNION: **O.P.S.E.U.**

EMPLOYER: **Ministry of Community and Social Services**

INDIVIDUAL COMPLAINANT: **T. Frawley**

TYPE OF APPLICATION/COMPLAINT: **Unfair Labour Practice**

DECISION DATE: **Apr. 29/93**

PANEL: **P.C. Picher
W. Walsh
J. Coups**

SUMMARY

DISCRIMINATION - Condemnation and criticism due to settlement of grievance - Refusal to make acting appointment permanent - Remedy - Section 29(2)

INTIMIDATION - Condemnation and criticism due to settlement of grievance - Refusal to make acting appointment permanent - Remedy - Section 29(2)

REMEDY - Unfair labour practice - Retaliation, discrimination and intimidation - Condemnation and criticism due to settlement of grievance - Refusal to make acting appointment permanent - Section 29(2)

UNFAIR LABOUR PRACTICE - Retaliation, discrimination and intimidation - Condemnation and criticism due to settlement of grievance - Refusal to make acting appointment permanent - Remedy - Section 29(2)

SECTION 29(2) - Retaliation, discrimination and intimidation - Condemnation and criticism due to settlement of grievance - Refusal to make acting appointment permanent - Remedy

Complainant, a surplus employee, was appointed in entry level position with promise that he'd soon be appointed manager of one of three satellite offices. He immediately undertook management duties. One year later, a manager was appointed outright for one of the other satellite offices, and he was paid at AM-18 level. Complainant was assured he would eventually receive permanent appointment and same pay rate as colleague.

After more than two years, complainant was finally appointed, but on an acting basis instead of permanent. He was paid at level of AM-17, lower than colleague, but was told colleague would have his salary red-circled. Complainant then grieved, saying he'd been acting as manager all along, and should be compensated at AM-17 level from start. Complainant's grievance was settled on basis he'd be paid at AM-17 level from start. This did not include any payment for past overtime, which was discussed at settlement meeting but not acted upon in settlement.

One of complainant's managers believed settlement included payment for overtime, which he felt was unjustified. He wrote complainant a personal letter of condemnation accusing him of exploitation and unethical behaviour. Complainant complained, and letter was eventually removed from his files.

Centre's assistant administrator also bore significant ill will towards complainant because of grievance, and made a highly critical, personal attack on him at a seminar he presented at a meeting of centre's managers.

One year passed after acting appointment but centre's acting administrator refused to appoint complainant on a permanent basis. A new administrator was appointed soon thereafter and he, too, refused to make appointment permanent.

Two years after first grievance, complainant filed a second grievance, when he learned that his colleague had not had his pay red-circled. He sought pay at the higher level from the beginning of his tenure in position. A third colleague settled similar grievance by accepting pay at AM-18 level back to time of acting appointments. Soon thereafter, complainant filed Tribunal complaint. One month later, Grievance Settlement Board dismissed complainant's grievance on basis it dealt with classification of a managerial position, so Board did not have jurisdiction.

A few months later, centre reorganized and team manager position was abolished. A single position was created, instead of three, but it was posted with prerequisites that complainant did not meet. Within four more months, complainant was forced to revert to his original, entry-level position in a new location. He had been left in the acting capacity for three and a half years altogether, even though management policy called for acting appointments to continue for one year at the most.

Complainant was offered travel allowance for thirty days, then Home

Relocation package. Complainant asked that time period for making relocation be delayed, pending Tribunal decision. Tribunal so ordered on consent of parties, but further issue arose as to whether agreement included continuation of travel allowance pending outcome.

Held: employer had engaged in several unfair labour practices.

Letter in reaction to settlement of first grievance was clearly discrimination for having filed and settled grievance, contrary to s. 29(2). It was also intimidation to compel complainant from further exercising his rights under the Act.

Action of assistant administrator in attacking complainant at managers' meetings was also a breach of s. 29(2), as it was not due to legitimate professional disagreement but due to personal *animus* against complainant due to grievance settlement. This was discrimination under the Act.

Refusal to appoint complainant on permanent basis, as had been promised, and as required by management's own policy, was also a breach of s. 29(2). It was retaliation due to new administrator's contaminated *animus* against complainant based on first grievance, later compounded by his second grievance.

Reorganization and subsequent posting of replacement position with prerequisites complainant did not meet was not discriminatory. Tribunal found this was based on legitimate reasons.

Remedy: As remedy for discrimination, intimidation and retaliation, goal was to put complainant in same position as if employer had not breached the Act. Tribunal ordered:

- Complainant's records be amended to reflect a permanent appointment as team manager from beginning of his tenure in position until last date on which position was discontinued (which was later than date on which complainant left position);
- Complainant's records be amended to reflect full text of Tribunal decision and a written apology from management, although Tribunal declined request to have apology published through region of Ministry;
- Tribunal declined to appoint complainant to a managerial position, but ordered compensation for lost opportunity to be put on management surplus list when position was abolished, rather than reverting to bargaining unit position, as measured by difference between pay in bargaining unit position and AM-17 level, which was reasonable expectation for a replacement job;
- Compensation for salary loss at AM-18 level from beginning of tenure in team manager role;

- Payment of travel allowance, as it was integral part of extending Home Relocation time limit and should have been paid;
- That time limit for Home Relocation Plan would start to run from implementation of Tribunal's decision;
- Interest on compensation payable.

UNION: **O.P.S.E.U.**

EMPLOYER: **Ministry of the Environment**

INDIVIDUAL COMPLAINANT: **D. Bell**

TYPE OF APPLICATION/COMPLAINT: **Unfair Labour Practice**

DECISION DATE: **June 23/89**

PANEL: **J.H. Devlin
M. Sullivan
R. Redford**

SUMMARY

DISCRIMINATION - Change of duties after filing of grievance - Legitimate business purpose - Section 29(2)(a)

UNFAIR LABOUR PRACTICE - Discrimination - Change of duties after filing of grievance - Legitimate business purpose - Section 29(2)(a)

SECTION 29(2)(a) - Discrimination - Change of duties after filing of grievance - Legitimate business purpose

Complainant had duty of responding to applications for Permits to Take Water under the Water Resources Act. For six years he issued routine permits virtually independently, and reviewed special permits with his supervisor's superiors, who always accepted his recommendations. After grieving his classification on the basis that he exercised independent discretion so should be classified higher, employer sought legal advice on "rubber-stamping" of permits, and received advice that these permits could be invalid. Employer then removed independent authority from complainant, and he claimed discrimination under s. 29(2)(a) due to having exercised his right to grieve under the Act, because employer had removed the very duties he relied on to support his claim to higher classification.

Held: complaint dismissed.

While a discriminatory motive must often be inferred from the evidence, no such inference could be drawn here. Legal opinion was sought by the new Regional Director, who had only recently become aware of the practice of issuing permits with the stamped signature of the Director under the Water Resources Act. Discontinuance of this practice was because of the legal opinion received, not because the complainant filed a grievance, and had the legitimate business purpose of ensuring that permits issued under the Water Resources Act were valid.

Fact that complainant's supervisor requested that special or contentious permit applications be reviewed with him was not discriminatory, either, as he was responsible for validity of permits and he simply wished to be more informed about procedures being followed.

While employer could have appointed complainant a Director under the Water Resources Act, thereby giving him authority to issue permits on his own, this was within the employer's discretion. No other bargaining unit member had ever been appointed, and the employer's failure to do so in this case did not lead to an inference of discrimination.

UNION: **C.U.P.E. Local 767**

EMPLOYER: **Ministry of Housing**

INDIVIDUAL COMPLAINANT: **J. Suppa**

TYPE OF APPLICATION/COMPLAINT: **Duty of Fair Representation**

DECISION DATE: **Sept. 8/89**

PANEL: **M.G. Mitchnick
K. McDonald
J. Coups**

SUMMARY

DUTY OF FAIR REPRESENTATION - Delay - Effect of substantial unexplained delay in filing complaint

DUTY OF FAIR REPRESENTATION - Refusal to file grievance or seek extension of time limits - Whether arbitrary or discriminatory - Section 30

SECTION 30 - Duty of fair representation - Refusal to file grievance or seek extension of time limits - Whether arbitrary or discriminatory

Complainant was terminated from his employment and union failed to file a grievance on his behalf or attempt to obtain an extension of time limits for filing grievance. Complainant claimed union acted arbitrarily and discriminatorily and treated his case in a summary and perfunctory manner, contrary to s. 30 of Act.

Held: complaint dismissed.

Complainant was inconsistent in his evidence about who he had contacted within union and when. Tribunal preferred union president's evidence that he told complainant there might be a time limit problem but that he would file a grievance if the complainant wished, and complainant never requested the filing of a grievance. In addition, complainant had delayed in filing complaint for 15 months, without any explanation.

UNION: **O.P.S.E.U.**

EMPLOYER: **Ministry of Government
Services et al.**

INDIVIDUAL COMPLAINANT: **Jim Glenney**

TYPE OF APPLICATION/COMPLAINT: **Unfair Labour Practice**

DECISION DATE: **Feb. 20/90**

PANEL: **J. H. Devlin
M. Sullivan
C. Boettcher**

SUMMARY

INTERFERENCE WITH UNION - Local union president denied secondment - Whether anti-union animus - Section 29

UNFAIR LABOUR PRACTICE - Interference with employee's rights - Local union president denied secondment - Whether anti-union animus - Section 29

Issue was whether employer acted contrary to s. 29 in denying a secondment to the local union president. Employee described his relationship with management as difficult.

Held: complaint dismissed.

The Tribunal accepted the employer's evidence that secondments were deferred by the branch director due to a shortage of experienced staff. There was no evidence that branch director knew anything about the employee's relationship with management.

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| UNION: | O.P.S.E.U. |
| EMPLOYER: | Management Board of Cabinet |
| INDIVIDUAL COMPLAINANT: | -- |
| TYPE OF APPLICATION/COMPLAINT: | Bargaining Authority; Unfair Labour Practice |
| DECISION DATE: | Jul. 21/89 |
| PANEL: | P.C. Picher E.C. Witthames J.A. Coups |

SUMMARY

BARGAINING RIGHTS - Effect of employer's voluntary agreement to negotiate on prohibited area for bargaining - Whether estopped from relying on Act

BARGAINING RIGHTS - Tribunal's role and board of arbitration's role- Test for whether proposals are within scope of collective bargaining - Sections 7 and 18

BARGAINING RIGHTS - Union's rights to bargain on behalf of retired employees and current employees' retirement benefits

CONTRACTING OUT - Bargaining proposal to establish joint review committee allowed

CONTRACTING OUT - Bargaining proposal to forbid contracting out disallowed

HEALTH AND SAFETY - Bargaining proposal to limit electronic monitoring allowed

HOURS OF WORK - Bargaining proposal to establish overtime roster and offer overtime on basis of seniority allowed

JOB EVALUATION - Bargaining proposal to eliminate electronic monitoring allowed as matter of health and safety

JOB POSTING - Bargaining proposal to increase area of search allowed

JOINT COMMITTEE - Bargaining proposal to establish joint committee to review privatized/contracted out undertakings allowed

PROBATIONARY PERIOD - Bargaining proposal to affect probationary periods for seasonal employees disallowed

RETIREMENT - Union's rights to bargain on behalf of retired employees and retirement benefits of current employees

SCHEDULING - Bargaining proposal to establish overtime roster and offer overtime on basis of seniority allowed

SUPERANNUATION - Effect of voluntary bargaining on pensions - Whether estoppel - Bargaining proposal disallowed

TECHNOLOGICAL CHANGE - Bargaining proposal to eliminate electronic monitoring allowed as matter of health and safety

TECHNOLOGICAL CHANGE - Bargaining proposal for one year's notice of major adverse changes allowed

TRAINING - Second language training - Bargaining proposal disallowed

UNCLASSIFIED EMPLOYEES - Bargaining proposal dealing with casual employees' length and continuation of employment and status allowed

UNCLASSIFIED EMPLOYEES - Bargaining proposal dealing with probationary periods for seasonal employees disallowed

UNCLASSIFIED EMPLOYEES - Bargaining proposal dealing with seasonal employees seeking civil service positions allowed

UNFAIR LABOUR PRACTICE - Duty to bargain in good faith - Whether proposal introduced after confirmation there were no further new proposals - Section 8(2)

VACANCIES - Bargaining proposal dealing with seasonal employees seeking civil service positions allowed

VACANCIES - Bargaining proposal to increase area of search allowed

SECTION 7 - Bargaining rights - Tribunal's role - Test for whether proposals are within the scope of collective bargaining - Sections 7 and 18

SECTION 8(2) - Duty to bargain in good faith - Whether proposal introduced after confirmation there were no further new proposals

SECTION 18 - Bargaining rights - Tribunal's role - Test for whether proposals are within the scope of collective bargaining - Sections 7 and 18

Union sought ruling on whether a number of its bargaining proposals were within scope of Act, including proposals on privatization/contracting out, technological change, overtime, second language training, insured benefit plans, posting and filling vacancies, pensions, unclassified staff, and casuals.

Union also claimed employer had failed to bargain in good faith under s. 8(2) of Act. Latter claim was based on fact that employer introduced a proposal to amend the sick leave provisions after previously confirming to the union that it had no further proposals to present.

Held: breach of duty to bargain in good faith complaint dismissed; bargaining authority rulings allowed in part.

Union had already presented a proposal to increase sick leave benefits. Employer's proposal, while decreasing benefits, also restructured sick leave plan. Tribunal was satisfied that this was a valid counter proposal to union's proposal and would not have been advanced at all if union hadn't first raised matter. Proposal was not a breach of the duty to bargain in good faith.

Where a proposal could fall within either s. 7 or s. 18(1) of Act, Tribunal examines its main thrust, its basic nature and effect. Ruling will be based on which section its dominant quality and substance falls within.

Privatization/contracting out proposal sought to have currently privatized undertakings reviewed by a union/management committee to review means of returning them to the bargaining unit, and to prohibit all future privatization/contracting out. Tribunal found main thrust of joint committee proposal was job security within s. 7, which sought to mitigate effects of privatization that had already occurred, not to forbid contracting out, which would impede employer's right to determine complement, organization and work methods and procedures under s. 18(1). Second part of proposal, seeking a complete ban on future contracting out, was breach of s. 18(1) and was disallowed.

Technological change proposals sought elimination of electronic monitoring and one year's notice on major changes to equipment which would adversely affect the bargaining unit. Union presented evidence of reports and studies linking electronic monitoring with health and safety. Tribunal therefore accepted that primary purpose of proposal was to protect employees' health within s. 7, even though it touched on area of appraisal within s. 18. Proposal was allowable to extent its primary focus was health and safety. Proposal for one year's notice was not a complete ban on new technology, nor did it infringe employer's authority over work methods and procedures and kinds and locations of equipment; rather, it was aimed at job security under s. 7, and was allowable.

Overtime proposal sought to require a roster of available employees, with overtime to be offered on the basis of seniority. Although proposal dealt with assignments within s. 18(1), its main thrust was hours of work within s. 7, so it was allowable.

Second language compensation proposal required employer to provide training and bear related costs for any employee who sought second language training for career advancement purposes. Main thrust of proposal was training, which falls within s. 18(1), so proposal was disallowed.

Insured benefit plans proposal required continued benefits for current retirees and for current employees once they retired. To extent that proposal sought to bargain on behalf of current retirees, proposal was disallowed, on basis of T/0032/81, as it was not within scope of collective bargaining under s. 7 because bargaining was not on behalf of employees. Proposal was allowable to extent it related to retirement benefits of current employees.

Proposal regarding posting and filling of vacancies sought to increase the size of the area of search. This was directed to "promotions, demotions, transfers, lay-offs or re-appointments" within s. 7, and therefore was allowable even though it might touch on matters within s. 18(1).

Pension proposal sought to make pension plan bargainable and sought major changes to plan. Union argued employer was estopped from objecting to proposal, and that proposal was allowable under s. 7. Employer had unilaterally initiated pension negotiations separate from bargaining under the Act, and union claimed this estopped employer from objecting to bargaining under the Act. Tribunal found employer never represented that pension negotiations were within provisions of Act, so there was no basis for estoppel. Mere action of employer in negotiating on a matter not within the scope of bargaining under the Act does not establish the basis for an argument of estoppel. Proposals on pensions were not within scope of collective bargaining, as they were matters of superannuation exclusively within employer's powers under s. 18(1).

Proposals on unclassified staff sought to change probationary period for seasonal employees; employer claimed this violated s. 8(1) of Public Service Act. Discretion under this Act relates to both fact of probation and its duration. Furthermore, matter was one of employment and appointment under s. 18(1) of C.E.C.B.A., and proposal was disallowed. Main thrust of proposal affecting conditions under which seasonal employees could seek civil service positions was vacancies, within s. 7, even though it touched on appointments under s. 18(1). Therefore, this proposal was allowable.

Proposal on casual employees dealt with length of employment, continuation of casual employment and casual employees' status. Tribunal found proposal was within s. 7 to extent it dealt with reappointments and creation of vacancies, and there was no necessary conflict with power to appoint under s. 8(1) of Public Service Act.

UNION: **O.P.S.E.U.**

EMPLOYER: **Ministry of Education**

INDIVIDUAL COMPLAINANT: **Klassen**

TYPE OF APPLICATION/COMPLAINT: **Unfair Labour Practice;
Preliminary**

DECISION DATE: **Oct. 21/90**

PANEL: **D. Stanley
M. Sullivan
J. Coups**

SUMMARY

DISCRIMINATION - Due to filing of grievances - Delay - Whether complainant could rely on grievances filed 3 and 6 years before complaint

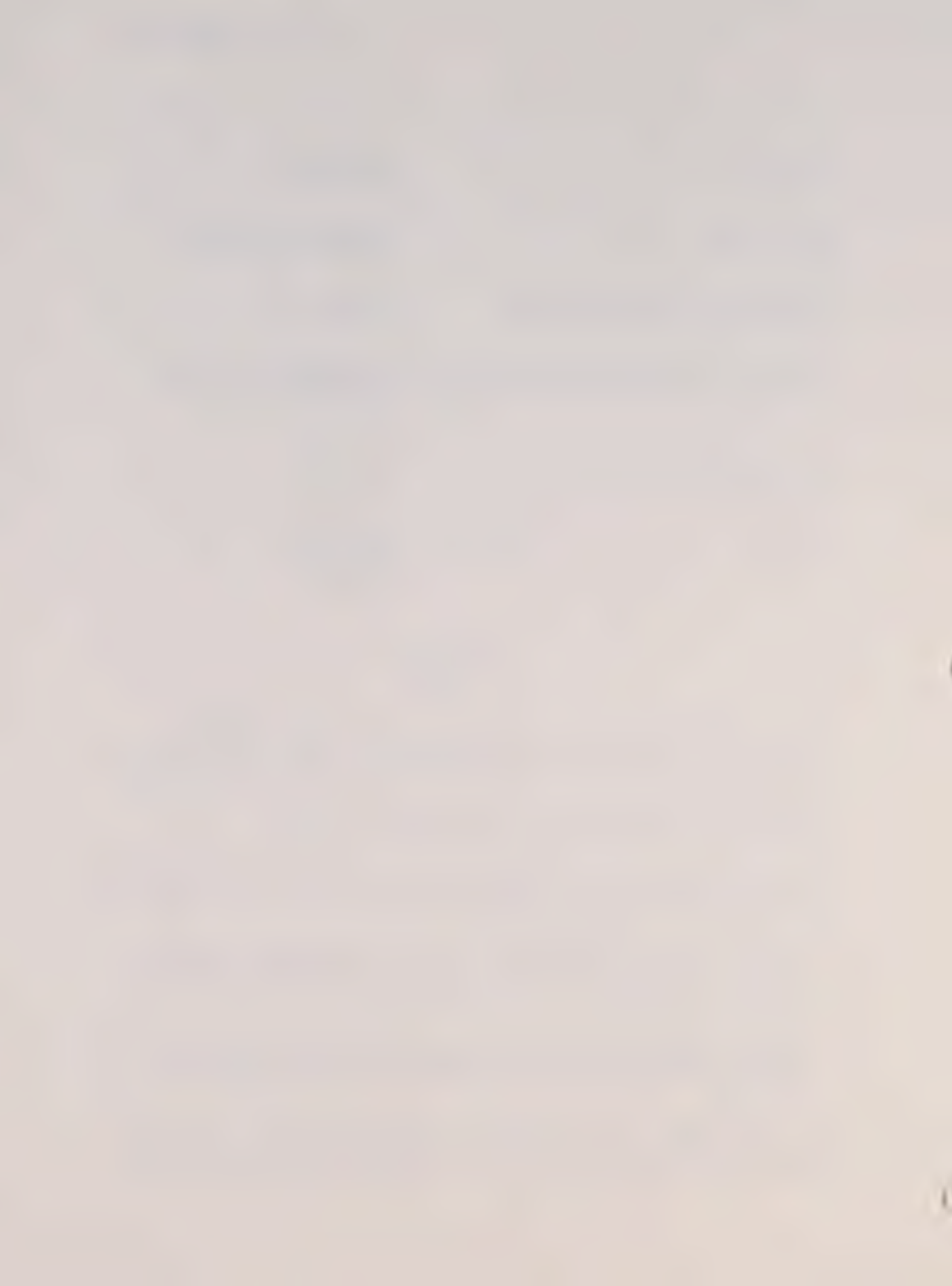
DISCRIMINATION - Due to filing of grievances - Whether complainant could rely on grievance dismissed for lack of jurisdiction

PROCEDURE - Delay - Unfair labour practice complaint of discrimination due to filing of grievances - Whether complainant could rely on grievances filed 3 and 6 years before complaint

UNFAIR LABOUR PRACTICE - Delay - Discrimination due to filing of grievances - Whether complainant could rely on grievances filed 3 and 6 years before complaint

UNFAIR LABOUR PRACTICE - Discrimination due to filing of grievances - Whether complainant could rely on grievance dismissed for lack of jurisdiction

SECTION 29(2) - Discrimination due to filing of grievances - Whether complainant could rely on grievance dismissed for lack of jurisdiction



SECTION 29(2) - Discrimination due to filing of grievances - Delay - Whether complainant could rely on grievances filed 3 and 6 years before complaint

Complainant alleged the employer had refused to allow her to return to work after a disability leave, and that the refusal was due to her past filing of grievances. She alleged this was discrimination contrary to s. 29(2) of Act.

Employer raised preliminary objections seeking to have complaint dismissed due to delay, and seeking to dismiss part of complaint that was identical to allegations made in a human rights complaint that had not yet been resolved.

Held: preliminary objections dismissed.

Grievance filed after filing of the complaint could not be relied on to establish discrimination due to filing of grievances. Grievance filed in 1987 but dismissed for lack of jurisdiction could nevertheless found a complaint under s. 29(2), since employees must be free from retaliation whenever they exercise a right under the Act, so long as it is not an abuse of process.

Refusal to return complainant to work was similar to a "continuing grievance". Therefore, relying on grievances filed three and six years before complaint did not amount to delay justifying dismissal of complaint, although complainant would face a heavy evidentiary burden where so much time separated the grievances and the act complained of.

Where facts alleged could give rise to remedies under the collective agreement, the Act and the Human Rights Code, Tribunal was not prepared to strike out the complaint merely because it could also be brought in another forum. The question of overlapping remedies could be dealt with when the merits of the complaint were heard.

UNION: **O.P.S.E.U.**

EMPLOYER: **Ministry of Education**

INDIVIDUAL COMPLAINANT: **I Klassen**

TYPE OF APPLICATION/COMPLAINT: **Unfair Labour Practice**

DECISION DATE: **February 26/93**

PANEL: **D. Stanley
M. Sullivan
J. Coups**

SUMMARY

ADJOURNMENT - Individual complainant requesting adjournment - Union and employer prepared to proceed - Adjournment denied

DISCRIMINATION - Issue estoppel - Relationship of unfair labour practice complaint to discrimination grievance

JURISDICTION OF TRIBUNAL - Unfair labour practice complaint - Relationship to discrimination grievance - Issue estoppel

UNFAIR LABOUR PRACTICE - Relationship to discrimination grievance - Issue estoppel

Complainant claimed that she was discriminated against due to her attempts to exercise her rights, contrary to s. 29(2)(a) and (c). Between start and conclusion of hearing, complainant had had a grievance decided by the Grievance Settlement Board that alleged a failure to accommodate her health and safety needs under the collective agreement; that grievance was dismissed, on the basis that there had been no failure to accommodate.

Complainant sought adjournment of hearing while she sought judicial review of GSB award. The union was prepared to proceed with the hearing, as was the employer.

Employer moved to dismiss the complaint based on issue estoppel, arguing that the very issue to be decided by the Tribunal had already been decided by the GSB.

Held: adjournment denied; complaint dismissed.

Regarding adjournment, union was official applicant, not individual complainant. Tribunal had no jurisdiction over dispute between union and one of its members. Since both parties — union and employer — were prepared to proceed, adjournment request was denied.

Issue estoppel has been applied by the Ontario Labour Relations Board where an essential issue has already been determined, in order to avoid duplication and the burden of requiring one party to defend itself more than once against the same charge.

Here, grievance alleging discrimination due to handicap and unfair labour practice complaint alleging discrimination based on anti-union animus both included essential element of discriminatory treatment. GSB had already ruled there had been no failure to accommodate complainant, and therefore no discriminatory treatment. Furthermore, remedy sought was enforcement of complainant's contractual rights, which showed that complaint was brought in furtherance of a contractual dispute. Since there was no overriding, critical issue of interpretation of C.E.C.B.A. being asserted, and essential issue had already been determined, it would be improper to require employer to defend itself again against a claim that it did things that the GSB already found it did not do.

UNION: **O.P.S.E.U.**

EMPLOYER: **Ministry of Health**

INDIVIDUAL COMPLAINANT: **V. Karst**

TYPE OF APPLICATION/COMPLAINT: **Religious Objection**

DECISION DATE: **July 17/89**

PANEL: **J.H. Devlin
W. Walsh
W.J. Madigan**

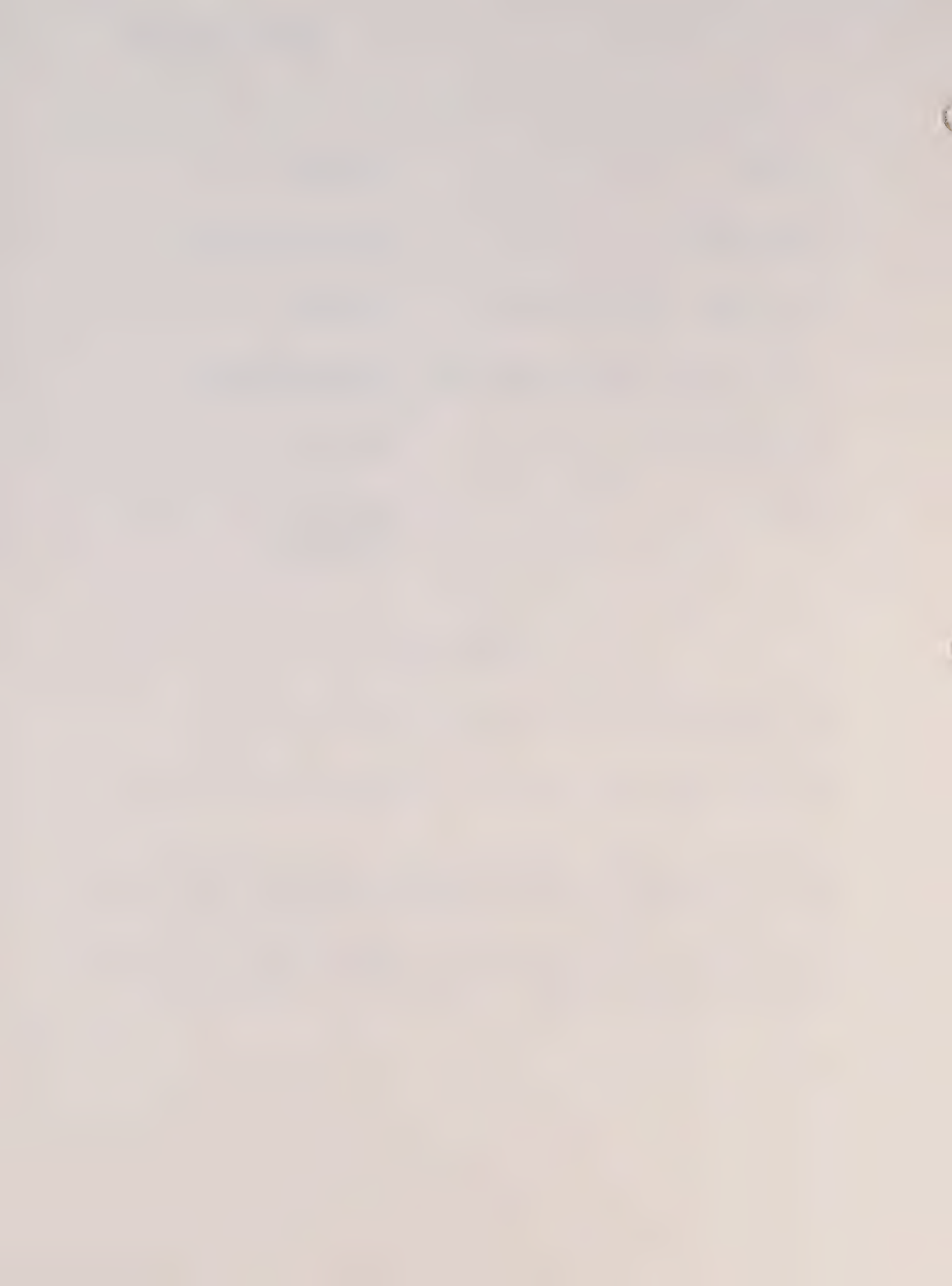
SUMMARY

RELIGIOUS OBJECTION - Union dues - Seventh Day Adventist -
Exemption allowed

SECTION 16(2) - Religious objection to union dues - Seventh Day Adventist -
Exemption allowed

Applicant, a Seventh Day Adventist, sought exemption from union dues because union's methods of confrontation and conflict were contrary to her belief in the scriptures and teachings of God advocating love and peace.

Held: exemption allowed under s. 16(2), as applicant's religious beliefs were sincere and there was the necessary nexus between her beliefs and her objection to paying union dues.



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| UNION: | O.P.S.E.U. and James Clancy, Larry Rose, William Jobe, Robert Wilson and Don Ball |
| EMPLOYER: | -- |
| INDIVIDUAL COMPLAINANT: | James Glenney, Jack Mills and George MacLellan |
| TYPE OF APPLICATION/COMPLAINT: | Duty of Fair Representation; Preliminary |
| DECISION DATE: | July 3/90 |
| PANEL: | J. Devlin K. McDonald C. Boettcher |

SUMMARY

JURISDICTION OF TRIBUNAL - Procedure - Tribunal's right to set own procedure - Whether Tribunal obligated to keep verbatim record of proceedings

PROCEDURE - Record of proceedings - Counsel's entitlement to tape record proceedings

PROCEDURE - Record of proceedings - Whether Tribunal obligated to keep verbatim record of proceedings

SECTION 38(13) - Jurisdiction of Tribunal to set own procedure - Whether Tribunal obligated to keep verbatim record of proceedings

SECTION 43 - Jurisdiction of Tribunal to set own procedure - Whether Tribunal obligated to keep verbatim record of proceedings

Complainant's counsel argued Tribunal was obligated to keep a verbatim record of proceedings and lacked jurisdiction to proceed without doing so. In alternative, counsel sought permission to make his own audio recording of proceedings.

Held: Tribunal had jurisdiction to proceed without keeping a verbatim record; counsel was granted permission to make an unobtrusive recording of his own.

Sections 38(13) and 43 of Act allow Tribunal to determine its own procedure, subject to parties' right to be given full opportunity to present their evidence and make submissions. No legislation required Tribunal to keep a verbatim record. Therefore, Tribunal had discretion to decide whether or not to keep a verbatim record.

Routine keeping of a verbatim record would unduly increase the expense and formality of Tribunal proceedings. There were no exceptional circumstances warranting it in this case.

Tribunal allowed either counsel to make an unobtrusive tape recording of proceedings, as long as it did not interfere with conduct of the hearing, as doing so was similar to taking handwritten notes. Any improper use of the recording could be dealt with by the Tribunal if and when it occurred.

UNION: **O.P.S.E.U. and James Clancy,
Larry Rose, William Jobe,
Robert Wilson and Don Ball**

EMPLOYER: **--**

INDIVIDUAL COMPLAINANT: **James Glenney, Jack Mills and
George MacLellan**

TYPE OF APPLICATION/COMPLAINT: **Duty of Fair Representation**

DECISION DATE: **Nov. 7/90**

PANEL: **J. Devlin
K. McDonald
C. Boettcher**

SUMMARY

ADJOURNMENT - Failure to request - Parties not appearing for hearing - Complaint dismissed

DUTY OF FAIR REPRESENTATION - Procedure - Parties not appearing for hearing - No adjournment requested - Complaint dismissed

PROCEDURE - Parties not appearing for hearing - No adjournment requested - Complaint dismissed

Counsel and parties failed to appear for resumption of hearing, despite a notice of date, time and consequences of non-appearance having been mailed to counsel and each complainant. No adjournment had been requested, and attempts to reach complainants were unsuccessful.

Under these circumstances, complaints were dismissed.

UNION: **O.P.S.E.U.**

EMPLOYER: **Ministry of Natural Resources**

INDIVIDUAL COMPLAINANT: **Bruneau et al.**

TYPE OF APPLICATION/COMPLAINT: **Employee Status**

DECISION DATE: **July 23/90**

PANEL: **J.H. Devlin
M. Sullivan
C. Boettcher**

SUMMARY

EMPLOYEE STATUS - Seasonal workers hired on tripartite project - Whether improperly laid off or not recalled

EMPLOYEE STATUS - Employer - Tests for determining who is an employer

Several unclassified, seasonal workers grieved that they had been improperly laid off, or that they were not recalled to perform work being performed by junior employees.

Issue was whether Ministry was the employer of grievors, who were hired under a job creation program agreed to by the Ministry, Federal Crown and Algoma, a private company. Union argued that the project work was integral to the Ministry's operation and that the Ministry exercised fundamental control over the employees, so therefore was the employer.

Held: application dismissed.

The test for determining the identity of the employer was as set out in Sutton Place Hotel, [1980] O.L.R.B. Rep. Oct 1538. The criteria include looking at who exercises direction and control, who pays the employees, who imposes discipline, who hires, who has authority to dismiss, who is

perceived to be the employer, and whether there was an intention to create an employer-employee relationship.

No one factor determines the issue, and the facts of each case must be examined. The fundamental question is who exercises control over the employees.

Here, Algoma coordinated the program and negotiated with Canada Employment to obtain employees. Algoma and the Ministry supervised the projects, while Canada Employment paid the employees. The work was performed to Ministry standards, but Algoma hired employees, assigned work, provided day-to-day supervision and handled discipline and discharge. Therefore, Algoma exercised fundamental control over the employees and Algoma, not the Ministry, was the employer.

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| UNION: | O.P.S.E.U. |
| EMPLOYER: | Ministry of the Attorney General |
| THIRD PARTY: | Atchison & Denman Court Reporting Services Ltd. |
| TYPE OF APPLICATION/COMPLAINT: | Employee Status |
| DECISION DATE: | Dec. 16/91 |
| PANEL: | P.C. Picher W. Walsh J. McGivney |

SUMMARY

EMPLOYEE STATUS - "Crown employees" - Court reporters provided through third party for special project

Third party was awarded contract to provide transcripts of preliminary inquiry in Toronto Trust Trial. Union sought declaration that persons performing court reporting services at preliminary inquiry were "crown employees" and were also "public servants", and therefore were members of union's bargaining unit.

Held: application dismissed.

To determine identity of the employer, key test in the location of fundamental control. Here, Ministry did not have fundamental control over the court reporters, nor were they integrated into the Ministry's business.

Contract with the third party was for supply of a product (transcripts) and utilization of third party's specialized equipment and expertise, not for supply of labour.

Ministry had nothing to do with reporters' remuneration and supplied no equipment to them.

The reporters did not intermingle with Ministry's regular or freelance reporters and were brought in to provide same day or overnight transcripts, which was work not normally done by Ministry's reporters in Provincial Court (Criminal Division) proceedings.

Ministry did not hire or train the reporters or directly monitor their work. It had no control over their work assignment or hours of work. Its only control was to advise the third party if dissatisfied with the product and, if still dissatisfied, to cancel the contract.

Whether reporters were independent contractors or employees of the third party was not important, as they clearly were not crown employees within the meaning of the Act.

UNION: **O.P.S.E.U. and Ontario Union
of Court Reporters**

EMPLOYER: **Ministry of the Attorney
General**

INDIVIDUAL COMPLAINANT: **--**

TYPE OF APPLICATION/COMPLAINT: **Employee Status**

DECISION DATE: **Sept. 17/90**

PANEL: **P. Picher
W. Walsh
J. McGivney**

SUMMARY

EMPLOYEE STATUS - Court clerks, bailiffs and office staff of Small Claims Court - Whether public servants

EMPLOYEE STATUS - Court interpreters - Whether public servants

EMPLOYEE STATUS - Freelance court reporters - Whether public servants

PROCEDURE - Appointment as a public servant - Procedure for appointment to classified and unclassified service

UNCLASSIFIED EMPLOYEES - Court clerks, bailiffs and office staff of Small Claims Court - Whether public servants - Whether members of O.P.S.E.U. bargaining unit

UNCLASSIFIED EMPLOYEES - Court interpreters - Whether public servants - Whether members of O.P.S.E.U. bargaining unit

UNCLASSIFIED EMPLOYEES - Freelance court reporters - Whether public servants - Whether members of O.P.S.E.U. bargaining unit

Issue was whether freelance court reporters, court interpreters, clerks, bailiffs and small claims court employees were public servants, and therefore members of the O.P.S.E.U. bargaining unit.

Held: employees were public servants and fell within O.P.S.E.U. bargaining unit.

Employees were not appointed to their positions under the Public Service Act, but they shared a community of interest with other public servants and they were not disqualified under the express exclusions from the bargaining unit.

The only reason they were not appointed was that they were not considered to be crown employees at the time they were hired. Now that they had been found to be crown employees, there was no reason they could not be appointed as public servants. It was not conducive to sound labour relations policy that the Ministry could arbitrarily choose which employees to appoint as public servants, and it could not have been intended by the legislature that the Ministry would have this control over the composition of the bargaining unit.

After looking at each group of employees, the Tribunal found that the employees were properly part of the unclassified service, and should be deemed to have been so appointed. In the alternative, the employees were within the general definition of "public servant" in the Public Service Act and that as such they had bargaining rights, even if they were neither part of the classified or unclassified service.

UNION: O.P.S.E.U.

EMPLOYER: Ministry of Correctional Services

INDIVIDUAL COMPLAINANT: Ken Cameron

TYPE OF APPLICATION/COMPLAINT: Unfair Labour Practice

DECISION DATE: May 16/90

PANEL: J. Devlin
K. McDonald
R. Redford

SUMMARY

JURISDICTION OF TRIBUNAL - Unfair labour practice complaint - Previous settlement - Whether res judicata - Whether Tribunal had jurisdiction to hear second complaint identical to earlier complaint which was withdrawn

RES JUDICATA - Unfair labour practice complaint - Previous settlement - Whether Tribunal had jurisdiction to hear second complaint identical to earlier complaint which was withdrawn

SETTLEMENT - Unfair labour practice complaint - Previous settlement - Whether res judicata - Whether Tribunal had jurisdiction to hear second complaint identical to earlier complaint which was withdrawn

SECTION 32(5) - Effect of previous withdrawal of complaint - Whether Tribunal had jurisdiction to hear second complaint identical to earlier complaint which was withdrawn

Employee had filed both a complaint and a grievance regarding attendance and vacation scheduling. After meetings between the employer and the union, parties agreed to withdraw both complaint and grievance and

signed a Memorandum of Withdrawal on a without prejudice basis. Union later claimed employer had not met conditions agreed to for withdrawal, and filed a second, identical complaint. The employer argued the withdrawal was meant to be unconditional.

Employer had contacted grievor to suggest he might want to reactivate the grievance, but said this did not apply to the complaint.

Issue was whether Tribunal had jurisdiction to consider a complaint identical to a previous complaint which was withdrawn.

Held: Tribunal had jurisdiction to entertain merits of complaint.

Section 32(5) provided that a settlement agreed to in writing was binding. Furthermore, where a party expressly or impliedly accepted the other party's position, it could not later be permitted to reject that position.

However, here the parties had indicated they would continue to address the concerns raised by the employee. The written memorandum did not express the full agreement between the parties and therefore did not bar a subsequent complaint. Furthermore, the employer's position on the grievance was inconsistent with its claim that the complaint had been settled, since the two matters had been dealt with together and there was no reason to think that grievance remained outstanding but the complaint had been resolved.

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| UNION: | O.P.S.E.U. |
| EMPLOYER: | Ministry of Health et al. (Owen Sound Emergency Services Inc.) |
| INDIVIDUAL COMPLAINANT: | -- |
| TYPE OF APPLICATION/COMPLAINT: | Unfair Labour Practice/ Consent to Prosecute (Interim) |
| DECISION DATE: | Feb. 19/90 |
| PANEL: | D. C. Stanley K. McDonald W. Madigan |

SUMMARY

EMPLOYEE STATUS - Ambulance employees - Stay of proceedings sought pending judicial review in another case

PROCEDURE - Stay of proceedings - Tests to be applied - Where issue before Divisional Court on judicial review

Union applied for declaration that employer caused unlawful lockout and for consent to prosecute. Prior Tribunal award (T/0058/84) held that McKechnie Ambulance Service Inc. was a crown agency and that its employees were crown employees. Union alleged that Owen Sound Ambulance Services Inc. was in same position as McKechnie and the employees were crown employees who cannot be locked out.

Employer sought stay of proceedings pending application for judicial review of the McKechnie award.

Held: stay of proceedings denied.

Tribunal may stay an application where the very issue to be decided will be settled in another forum and where such decision is binding. Tests are irreparable harm, prima facie case for relief and balance of interests.

Request for stay was refused here because crown would not accept that court's decision would be determinative of the employee status issue. Furthermore, there would be no irreparable harm on the balance of interest test, and in the public interest the matter of employee status ought to be determined as soon as possible.

UNION: **O.P.S.E.U.**

EMPLOYER: **Ministry of Health et al. (Owen Sound Emergency Services Inc.)**

INDIVIDUAL COMPLAINANT: **--**

TYPE OF APPLICATION/COMPLAINT: **Unfair Labour Practice/
Consent to Prosecute/
Employee Status**

DECISION DATE: **Mar. 19/90**

PANEL: **D. C. Stanley
K. McDonald
W. Madigan**

SUMMARY

EMPLOYEE STATUS - Ambulance Service - Whether Crown is employer

EMPLOYEE STATUS - Effect of declaration of status - Retroactivity - Effect of previous Tribunal decisions

PROCEDURE - Precedents - Effect of prior Tribunal decisions

PROCEDURE - Employee status declaration - Effect - Retroactivity

UNFAIR LABOUR PRACTICE - Lockout - Whether illegal lockout existed - Effect of prior Tribunal decision - Consent to prosecute denied

Union sought declaration employer caused a lockout contrary to s.27 of Act, consent to prosecute under s.44 and for Tribunal to notify employees of impending Supreme Court of Ontario action to restrain employer from continuing breach.

Issue was whether employees were crown employees and whether a declaration of status had retroactive effect. Tribunal also considered binding effect of earlier Tribunal decision.

Held: Employees were crown employees, but declaration had no retroactive effect.

Prior Tribunal award in T/0058/84 (McKechnie Ambulance Services Inc.) held that similar ambulance service having similar relationship with crown was a crown agency and employees were crown employees within Act.

Tribunal stated that one panel of Tribunal should not overrule or sit in appeal of decision by another panel, and that consistency and predictability require that precedents be followed. In the circumstances, decision in McKechnie was a binding precedent, Owen Sound Ambulance Service was a crown agent and employees were crown employees. Therefore, any continuation of strike or lockout was contrary to Act.

However, McKechnie award did not in itself make employees of Owen Sound Ambulance Service crown employees. Employee status was not fixed until Tribunal ruled as to applicability of earlier case to facts before it. Thus, there had been no breach of the Act until status was determined, so the requests for consent to prosecute and for notice to employees of impending action were denied.

UNION: **O.P.S.E.U.**

EMPLOYER: **Ministry of Correctional Services**

INDIVIDUAL COMPLAINANT: **Derek Miller**

TYPE OF APPLICATION/COMPLAINT: **Unfair Labour Practice**

DECISION DATE: **May 29/90**

PANEL: **J. Devlin
M. Sullivan
W.J. Madigan**

SUMMARY

INTERFERENCE WITH UNION - Locking of guard huts - Whether penalty for grievance - Whether intimidation - Section 29(2)(c)

INTIMIDATION - Locking of guard huts - Whether penalty for grievance - Whether interference- Section 29(2)(c)

UNFAIR LABOUR PRACTICE - Locking of guard huts - Whether penalty for grievance - Whether intimidation - Section 29(2)(c)

WORK ASSIGNMENT - Locking of guard huts - Whether penalty for grievance - Whether intimidation - Section 29(2)(c)

SECTION 29(2)(c) - Intimidation - Locking of guard huts - Whether penalty for grievance

Correctional officers alleged employer was trying to intimidate employees, contrary to s. 29 of Act, by denying them access to guard huts. Employees had earlier successfully grieved the elimination of perimeter patrols, and claimed locking of huts was an indirect attempt to eliminate the patrols.

Employer claimed it had legitimate reasons for locking the huts, because they had been misused by officers reading or sleeping in them. The employer was willing to provide keys to the huts during inclement weather only.

Held: complaint allowed. Employer was ordered to grant access to huts.

Evidence did not support employer's claims, and an improper motive was attributed to employer. Locking the huts was a penalty imposed to deter employees from filing further grievances over the perimeter patrols, and this was a violation of s.29(2)(c).

UNION: **James Clancy**

EMPLOYER: **--**

INDIVIDUAL COMPLAINANT: **Anna Cancelli**

TYPE OF APPLICATION/COMPLAINT: **Duty of Fair Representation**

DECISION DATE: **Sept. 10/90**

PANEL: **J. Devlin
M. Sullivan
C. Boettcher**

SUMMARY

DUTY OF FAIR REPRESENTATION - Delay in proceeding with classification grievance - Whether union or union President responsible - Whether breach of s. 30

Complainant alleged that Clancy, President of O.P.S.E.U., failed to schedule her classification grievance before the GSB, in breach of the duty of fair representation under s. 30 of Act. Grievance had been forwarded to GSB in December, 1988 and had not yet been heard by September, 1990.

Held: complaint dismissed.

Union had pursued grievance over employer's initial failure to proceed with complainant's grievance. Since then, matter had been in process of meetings and discussions between union and employer over a number of classification grievances.

There was no evidence to support complainant's claim that her grievance was different from the other grievances being discussed and should be proceeded with separately. Nor was there any evidence that union or respondent were responsible for the delay in proceeding with the grievance. The only evidence was that union was discussing matter with employer, which did not indicate a breach of the duty of fair representation.

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| UNION: | O.P.S.E.U. |
| EMPLOYER: | Metropolitan Toronto Housing Authority et al. |
| INDIVIDUAL COMPLAINANT: | C.U.P.E., Intervener |
| TYPE OF APPLICATION/COMPLAINT: | Certification |
| DECISION DATE: | Sept. 28/90 |
| PANEL: | D. Stanley M. Sullivan W. Madigan |

SUMMARY

CERTIFICATION - Employer's status - Whether a Crown agency - Tribunal's jurisdiction to order pre-hearing vote

CERTIFICATION - Pre-hearing vote - Intervenor claiming it already has bargaining rights for employees - Effect on ordering of vote

CERTIFICATION - Pre-hearing vote - Whether properly ordered where employer's status in issue

PROCEDURE - Pre-hearing vote - Whether properly ordered where employer's status in issue

PROCEDURE - Pre-hearing vote - Whether properly ordered where intervenor claiming it already has bargaining rights for employees

Applicant sought bargaining rights to represent employees of Community Guardian Company, arguing that it was a Crown Agency due to its relationship with Metropolitan Toronto Housing Authority. Issue was whether Tribunal could direct a pre-hearing vote without first deciding status of the employer as Crown agent.

Held: pre-hearing vote ordered, with ballot to allow employees to indicate whether they wish to be represented by O.P.S.E.U. or C.U.P.E.

The issue of whether an employer is an agent of the Crown, and therefore within the jurisdiction of the Tribunal, is a question of fact, according to the Divisional Court in *O.P.S.L.R.T. and McKechnie Ambulance Service* (1987), 62 O.R. (2d) 108. Therefore, the issue should be decided by the Tribunal before any resort to the courts.

The purpose of a pre-hearing vote is to avoid delay and facilitate representation rights through prompt resolution of issues. This purpose would be thwarted if the Tribunal were to delay the pre-hearing vote until after the issue of employer status had been resolved. The Act provides for a pre-hearing procedure in order to avoid the problems associated with delay, and the stay sought here would deny any efficacy to the procedure provided by the legislature.

The intervenor, C.U.P.E., argued the employees in question were already covered by an existing collective agreement and by its mandate to represent all employees of Ontario Housing Corporation employed within Metropolitan Toronto. The intervener's interests would not be prejudiced by ordering a pre-hearing vote, however.

UNION: **O.P.S.E.U.**

EMPLOYER: **Ministry of Natural Resources**

INDIVIDUAL COMPLAINANT: **J. Millar**

TYPE OF APPLICATION/COMPLAINT: **Unfair Labour Practice**

DECISION DATE: **Nov. 1/91**

PANEL: **D. Stanley
P. O'Keeffe
R. Redford**

SUMMARY

HEALTH AND SAFETY - Health and Safety Committee - Interference in employee's access and participation - Unfair labour practice - Sections 29(1) and 29(2)(c)

INTIMIDATION - Health and Safety Committee - Interference in employee's access and participation - Unfair labour practice - Sections 29(1) and 29(2)(c)

UNFAIR LABOUR PRACTICE - Health and Safety Committee - Interference in employee's access and participation - Sections 29(1) and 29(2)(c)

SECTION 29(1) - Health and Safety Committee - Interference in employee's access and participation - Unfair labour practice - Sections 29(1) and 29(2)(c)

SECTION 29(2)(c) - Health and Safety Committee - Interference in employee's access and participation - Unfair labour practice - Sections 29(1) and 29(2)(c)

Complainant made report to Health & Safety Committee which management believed to be incorrect. Employer asked for more details and then disagreed with details provided. After meeting where manager tried to discredit complainant, manager told complainant he was about to give him an oral warning. Complainant immediately asked to go get a union steward, was told to stay put and walked out. He was then sent home for insubordination.

Later that day, parties met with union officials and employer told complainant to come back to work next morning, at which time the original meeting with the manager would be concluded. Union asked to have meeting rescheduled so that complainant could have union representation, but management refused. Complainant attended next day under protest and was given an oral warning about providing false information and was told he would receive a letter of reprimand for insubordination, which he later received.

Held: employer committed an unfair labour practice under ss. 29(1) and 29(2)(c).

Participation in and access to a Health & Safety Committee is an activity protected by the Act. Complainant was raising matters of general concern, but management's actions seem to have been taken as reprisals for his having spoken out on health and safety matters.

Manager interfered with the representation of employees under s. 29(1) by virtue of his actions in withdrawing complainant's memo to Committee and substituting his own. His actions also amounted to intimidation under s. 29(2)(c) to seek to prevent complainant from speaking out on health and safety matters and raising matters with Committee.

UNION: **O.P.S.E.U.**

EMPLOYER: **Ministry of Transportation**

INDIVIDUAL COMPLAINANT: **Neely & Stewart**

TYPE OF APPLICATION/COMPLAINT: **Employee Status**

DECISION DATE: **May 13/91**

PANEL: **J. Devlin
M. Sullivan
R. Redford**

SUMMARY

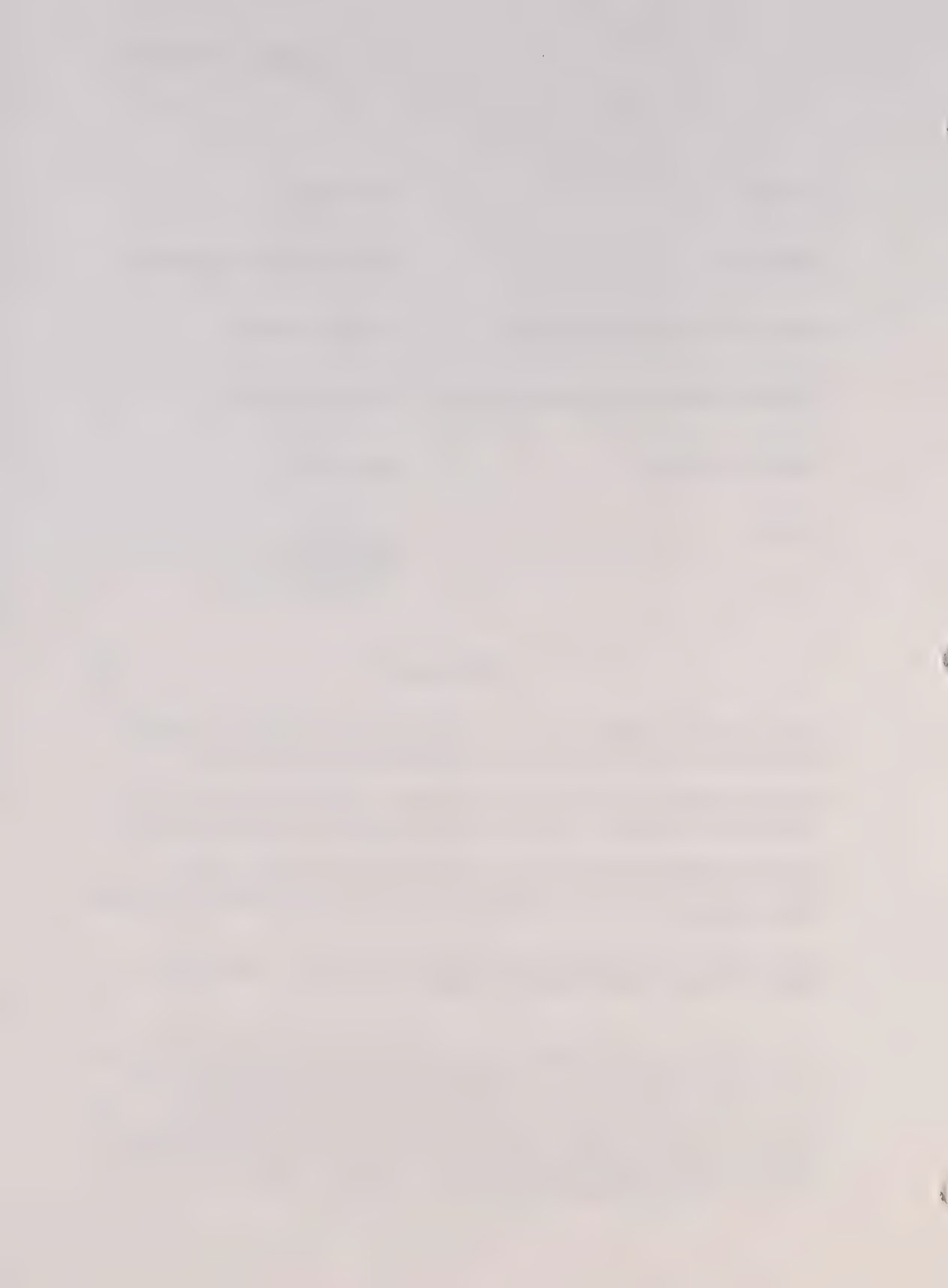
EMPLOYEE STATUS - Procedure - Non-suit motion - Whether moving party required to elect whether to call evidence - Ss. 38(13) and 40

PROCEDURE - Non-suit motion - Whether moving party required to elect whether to call evidence - Employee status application - Ss. 38(13) and 40

SECTION 38(13) - Discretion to set own procedure - Non-suit motion - Whether moving party required to elect whether to call evidence - Employee status application

SECTION 40 - Procedure - Non-suit motion - Whether moving party required to elect whether to call evidence

In employee status proceeding under s. 40, employer finished its evidence and union brought motion for non-suit, without making election as to whether it would call evidence. Union argued that Tribunal had jurisdiction to set own procedure under s. 38(13), and allowing motion to be entertained without requiring an election would be fair and expeditious. Employer argued that proposed procedure would be unfair and would not guarantee that delays could be avoided.



Held: ruling on motion reserved and union put to its election as to whether to call evidence.

While Tribunal had discretion to entertain non-suit motion without putting party to its election, it was not convinced that doing so would be appropriate. The practice of putting the moving party to its election is generally accepted before the OLRB and had been common practice before the GSB.

Tribunal had concerns about practice suggested in recent GSB case that election was not necessary and that board could make ruling without giving reasons, if non-suit motion was dismissed. Reasons are an important part of the process, and trier of fact should not be asked to evaluate evidence before all evidence is heard. Furthermore, here union's motion was not based on claim there was no evidence supporting an essential element of case, but rather that there was no cogent or direct evidence. This required Tribunal to weigh and assess evidence, which it was reluctant to do without union having elected whether it would be calling evidence. Nor was Tribunal convinced that avoiding election would save a significant amount of time.

Finally, Tribunal noted the investigatory nature of employee status proceedings. Decision should be rendered only after consideration of all relevant facts, and Tribunal would prefer to hear from affected employees, who were not called by employer in this case. It would not be appropriate to put evidentiary burden on one party alone by considering non-suit motion in the absence of an election.

UNION: **O.P.S.E.U.**

EMPLOYER: **Ministry of Transportation**

INDIVIDUAL COMPLAINANT: **Neely & Stewart**

TYPE OF APPLICATION/COMPLAINT: **Employee Status**

DECISION DATE: **Dec. 9/91**

PANEL: **J. Devlin
M. Sullivan
R. Redford**

SUMMARY

BURDEN OF PROOF - Employee status application - Seeking change in status quo - Effect of past practice - S. 40(1)

EMPLOYEE STATUS - Confidential employee - Unit Supervisor, District Office, Payroll/Personnel and Accounts Payable/Budget sections - Effect of maintenance of personnel and grievance files and some disciplinary involvement - S. 1(1)(l)(vii)

EMPLOYEE STATUS - Supervisory employee - Unit Supervisor, District Office, Payroll/Personnel and Accounts Payable/Budget sections - Whether supervision involving exercising effective control - S. 1(1)(l)(iii)

SECTION 1(1)(l)(iii) - Supervisory employee - Unit Supervisor, District Office, Payroll/Personnel and Accounts Payable/Budget sections - Whether supervision involving exercising effective control - Employee status

SECTION 1(1)(l)(vii) - Confidential employee - Unit Supervisor, District Office, Payroll/Personnel and Accounts Payable/Budget sections - Effect of maintenance of personnel and grievance files and some disciplinary involvement

SECTION 40(1) - Employee status application - Seeking change in status quo - Effect of past practice

Application involved two Unit Supervisors in a District Office. One was responsible for the Accounts Payable/Budget section, the other for the Payroll/Personnel section. From time to time, the incumbents rotated between the sections.

Positions had been included in the bargaining unit for nine years. In 1987 incumbents filed a grievance claiming reclassification to a higher level based on their actual duties differing from their job specification. Their grievance was eventually allowed, and the employer then decided to exclude them from bargaining unit in accordance with the revised position specification that had justified their upward classification.

Held: incumbents were employees for purposes of the Act and were properly included in the bargaining unit.

Doctrine of estoppel, based on argument that incumbents had obtained the benefit of the higher classification and therefore union should be estopped from arguing against the corresponding exclusion, did not apply. Employer never communicated its position to the union prior to the reclassification, nor did union ever acquiesce with view that duties that justified reclassification also justified exclusion.

Regarding significance of previous inclusion in the bargaining unit, the historical dimension is important and places a clear onus on the party seeking to change to status quo. However, the status quo does not in itself decide the matter.

While the Unit Supervisors spent a substantial amount of time supervising work of clerical staff, issue was whether they exercised effective control over employment relationship. Work on selection committees without chairing committees, preliminary performance appraisals and involvement in discipline to extent of giving verbal warnings were not enough to meet this test and satisfy s. 1(1)(l)(iii).

Regarding claim that Unit Supervisors were employed in a confidential capacity under s. 1(1)(l)(vii), person assigned to Payroll/Personnel section had responsibility for ensuring accuracy and confidentiality of personnel files, and also for maintaining grievance files. Tribunal held that while material in personnel files was confidential, it was not confidential in relation to employee relations as required by the Act. Supervisor was not privy to Ministry's labour relations strategy. Responsibility for maintaining grievance files had been removed from Unit Supervisor between time of application and hearing, and in any event it did not involve sensitive management information, which was kept in different files. Taking notes at a disciplinary interview, and answering employee questions with regard to benefits and terms and conditions of employment were not enough to put incumbents in genuine conflict of interest, so did not meet the Act's standards.

There was no compelling evidence demonstrating a need for a change in the status quo.

UNION: O.P.S.E.U.

EMPLOYER: Metropolitan Toronto Housing Authority

INDIVIDUAL COMPLAINANT: C.U.P.E., Intervener

TYPE OF APPLICATION/COMPLAINT: Certification

DECISION DATE: July 30/90

PANEL: D. Stanley
M. Sullivan
W. Madigan

SUMMARY

CERTIFICATION - Security guards - Appropriate bargaining unit where two unions claiming existing bargaining rights - Tribunal's jurisdiction

CERTIFICATION - Two unions claiming existing bargaining rights - Tribunal's jurisdiction to determine representation rights

JURISDICTION OF TRIBUNAL - Certification - Determination of appropriate bargaining unit where two unions claiming existing bargaining rights

SECTION 39 - Jurisdiction of Tribunal - Certification - Determination of appropriate bargaining unit where two unions claiming existing bargaining rights

Both applicant and intervener claimed right to represent security and investigative employees of employer, due to existing bargaining rights. Employer claimed that, due to nature of work, employees should be in a separate bargaining unit.

Parties agreed, and Tribunal affirmed, that Tribunal had jurisdiction to determine whether employees fell within either of existing bargaining

units or whether they should be in a separate unit. Parties could not clothe Tribunal with jurisdiction by consent, but Tribunal had clear mandate under s. 39 of Act to interpret effect of pre-existing representational rights upon these employees. Grievances before GSB would be subject to Tribunal's ruling on matter.

Examination of employees' job functions and responsibilities, and those of employees represented by both unions, was ordered.

UNION: **O.P.S.E.U.**

EMPLOYER: **Ministry of Community and
Social Services**

INDIVIDUAL COMPLAINANT: **R.Leclair**

TYPE OF APPLICATION/COMPLAINT: **Duty of Fair Representation;
Preliminary**

DECISION DATE: **Feb. 7/91**

PANEL: **J.H. Devlin
M.J. Sullivan
J.A. Coups**

SUMMARY

DUTY OF FAIR REPRESENTATION - Bias - Disparity in parties' financial status - Requests for particulars - Failed settlement discussions - Failure of union to attend pre-hearing meeting - No bias found

PROCEDURE - Bias - Disparity in parties' financial status - Requests for particulars - Failed settlement discussions - Failure of union to attend pre-hearing meeting - No bias found

PROCEDURE - Particulars - Multiple requests - Failed settlement discussions - Failure of union to attend pre-hearing meeting - Disparity in parties' financial status - No bias found

SETTLEMENT - Failed settlement discussions - Failure of union to attend pre-hearing meeting - Disparity in parties' financial status - No bias found

Complainant brought initial objection that proceedings were biased because of union's superior financial position compared to himself, and that union had taken unfair advantage of its financial superiority in dealing with the complaint.

Held: objection dismissed.

It was not unusual for informal discussions to include a request for particulars and for a later formal request to be made by counsel.

Union's failure to attend a scheduled pre-hearing meeting was due to a misunderstanding as to the date, not to an attempt to take advantage of union's financial superiority.

Regarding settlement agreed to in principle that later did not proceed due to failure of senior union officials to endorse it, it was not clear that union made it clear to complainant that settlement had to be approved. However, issue was not whether complaint was settled, but whether this situation amounted to bias.

Financial disparity between parties on its own is not grounds for a remedial order; nor did fact complainant paid union dues obligate the union to finance his complaint. Tribunal would not deprive union of counsel, as requested by complainant, because the right to counsel is absolute.

UNION: **O.P.S.E.U.**

EMPLOYER: **Ministry of Community and
Social Services**

INDIVIDUAL COMPLAINANT: **R.Leclair**

TYPE OF APPLICATION/COMPLAINT: **Duty of Fair Representation/
Unfair Labour Practice;
Preliminary**

DECISION DATE: **June 17/91**

PANEL: **J.H. Devlin
M.J. Sullivan
J.A. Coups**

SUMMARY

DUTY OF FAIR REPRESENTATION - Delay in filing complaint

DUTY OF FAIR REPRESENTATION - Particulars - Effect of statement of particulars

PROCEDURE - Delay - Duty of fair representation

PROCEDURE - Particulars - Duty of fair representation - Effect of statement of particulars

UNFAIR LABOUR PRACTICE - Framing of complaint - Failure to promptly carry out settlement of grievance - Failure to apologize - Effect of s. 19(6)

SECTION 19(6) - Effect - Unfair labour practice complaint based on failure to promptly carry out settlement of grievance

Complainant claimed a breach of the union's duty of fair representation due to handling of his grievances, and a breach of Ministry's duties based on failure to promptly implement settlement of a grievance.

Union sought dismissal of complaint based on delay, and also objected to some of particulars put forward which were not included in the original complaint. In alternative, union claimed there was no violation of the Act, as the settlement was eventually enforced so the complainant had suffered no loss.

Employer sought dismissal of complaint as against it on basis that s.19(6) relied on by complainant set up a procedure for enforcement of Grievance Settlement Board decisions but did not create any obligations which could give rise to a complaint if breached.

Held: complaint against union modified; complaint against employer dismissed.

Regarding particulars, complaint referred to the "grievance process" in general, but a number of documents were appended. While these referred to two different grievances, there were no details in documents that indicated any dissatisfaction with processing of one of the grievances. Therefore, it could not be concluded that that grievance formed part of the subject of the complaint.

Regarding union's argument of delay, it was true that some of events took place a number of years before the complaint was filed, but there was considerable delay during the grievance process, in the referral to arbitration and in enforcement of the settlement. Since these delays were the essence of the complaint, it would be inappropriate to dismiss the complaint on the ground of delay on a preliminary basis. Furthermore, complainant had expressed concerns about the delays prior to filing his complaint. Delay in filing complaint, and any prejudice caused to union, would be taken into account in entertaining the complaint on its merits.

Extent to which complainant suffered any loss would also be considered on the merits.

Matters raised for the first time in the statement of particulars were held not to form part of complaint, including one of the two grievances and settlement discussions occurring after the complaint was filed. However, complaints about union's failure to respond to complainant's concerns regarding enforcing the settlement were properly part of the complaint, as long as they did not deal with internal union matters, which are not properly the subject of a complaint under the Act.

Reference in particulars to a person who handled his grievance was proper, since complaint itself identified handling of that grievance as a subject of complaint.

Regarding complaint against employer, s. 19(6) establishes a procedure, not an offence which can form the basis for an unfair labour practice complaint. Essence of complaint was that settlement was not carried out within a reasonable time and that, when situation was finally rectified, Ministry officials did not apologize for the delay. However, failure to apologize was not in itself a violation of the Act, nor could employer be faulted for dealing with the union rather than the complainant directly, since union had represented him in the grievance. Since allegation of bad faith against employer was not framed in terms of a breach of s. 32 of the Act, complaint against employer was dismissed.

UNION: O.P.S.E.U.

EMPLOYER: Ministry of Community and Social Services

INDIVIDUAL COMPLAINANT: R.Leclair

TYPE OF APPLICATION/COMPLAINT: Duty of Fair Representation;
Preliminary

DECISION DATE: Feb. 21/92

PANEL: J.H. Devlin
M.J. Sullivan
J.A. Coups

SUMMARY

DUTY OF FAIR REPRESENTATION - Right to counsel - Duty of union to provide representation for complainant

PROCEDURE - Right to counsel - Duty of union to provide representation for complainant in duty of fair representation case

Complainant claimed union was obligated to provide representation for him in duty of fair representation case, by virtue of union constitution, union policy manual and collective agreement. He also claimed obligation arose by virtue of the duty to provide a fair hearing, which required Tribunal to mitigate the inequities due to disparate financial resources of parties.

Held: objections dismissed.

Argument regarding financial resources was essentially same argument as was already dealt with in T/0015/90-1.

Regarding union's duty to provide representation, Tribunal had no jurisdiction over internal union affairs or over enforcement of the collective agreement. While complainant has the right to counsel, he does not have the right to have legal representation provided by the union in these circumstances.

UNION: **O.P.S.E.U.**

EMPLOYER: **Public Service Pension Board**

INDIVIDUAL COMPLAINANT: **--**

TYPE OF APPLICATION/COMPLAINT: **Successor Rights**

DECISION DATE: **Dec. 7/90**

PANEL: **D. Stanley
P. O'Keefe
R. Redford**

SUMMARY

SUCCESSOR RIGHTS - Transfer of duties to newly-created Crown agency - Union have representation rights for old agencies

SUCCESSOR RIGHTS - Agreement of parties to declaration - Effect

Union sought declaration that it retained right to represent employees of new Public Service Pension Board. Board was a newly-created Crown agency which was taking over responsibilities formerly performed by the Public Service Superannuation Board and the Employee Pension and Benefit Administration Branch of the Ministry of Government Services, for whose employees union had a subsisting collective agreement.

Held: declaration granted. Although Tribunal lacked a quorum on the day of the hearing, parties had filed an agreement to the declaration and no other union had sought representation rights, so the declaration was granted in accordance with the parties' wishes.

UNION: O.P.S.E.U.

EMPLOYER: Ministry of Transportation

INDIVIDUAL COMPLAINANT: D. Johnson

TYPE OF APPLICATION/COMPLAINT: Unfair Labour Practice

DECISION DATE: Mar. 18/91

PANEL: D. Stanley
M. Sullivan
C. Boettcher

SUMMARY

PROCEDURE - Unfair labour practice - Form of complaint - Sufficiency of particulars - S. 29(2)(c)

UNFAIR LABOUR PRACTICE - Form of complaint - Sufficiency of particulars - S. 29(2)(c)

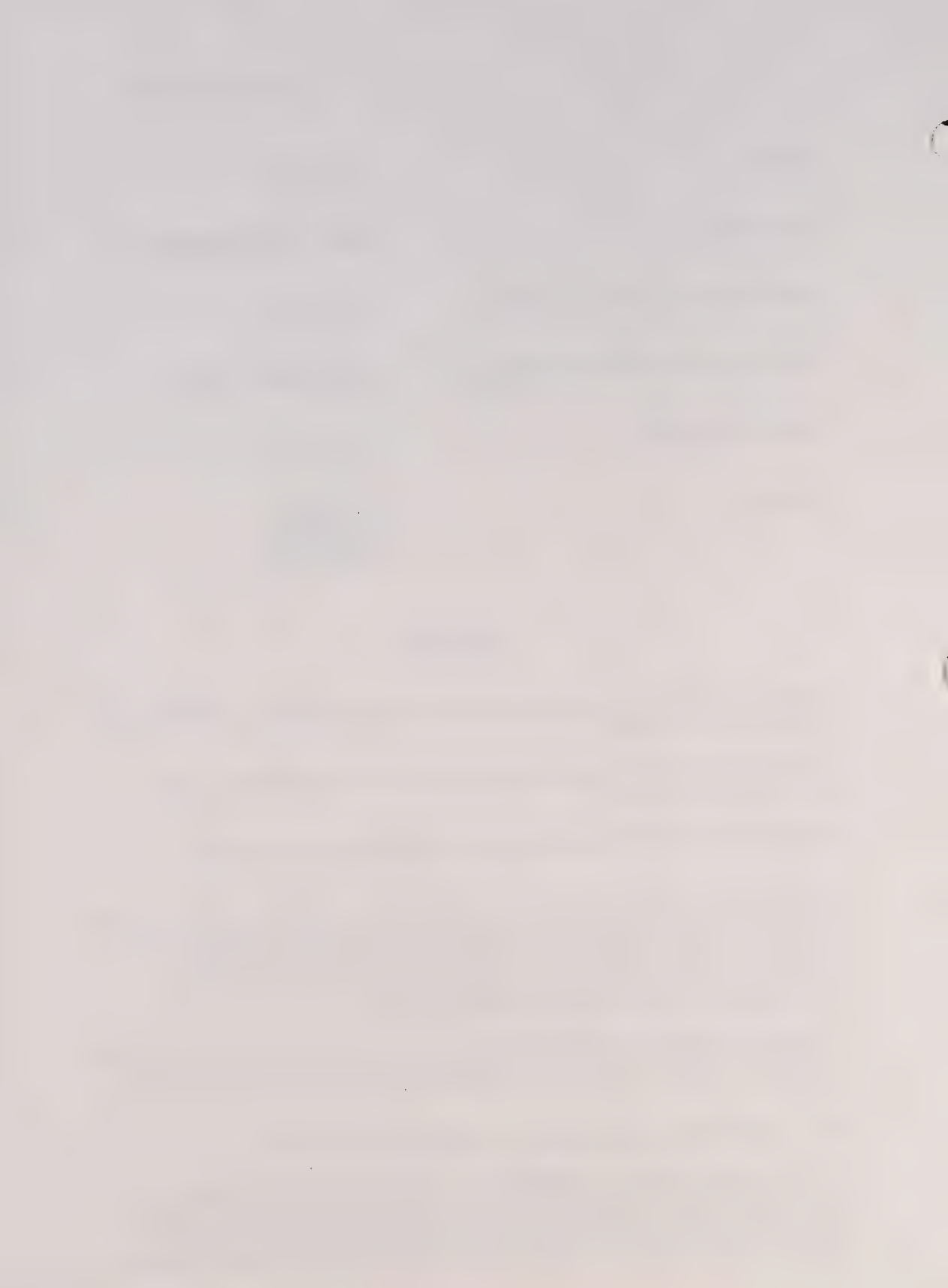
SECTION 29 (2)(c) - Form of complaint - Sufficiency of particulars

Complainant submitted a doctor's certificate stating he required four weeks off due to illness. The next day, the employer demanded particulars and threatened dismissal if they were not provided. Complainant filed a grievance and a few days later, employer suspended his sick leave retroactive to the date of the information request.

Employer argued the complaint did not present a *prima facie* case, or in the alternative that the complaint was too vague to allow it to prepare a proper defence.

Held: complaint should proceed to a hearing on the merits.

When an employee seeks entitlement to a benefit under the collective agreement, he is exercising a right that springs from C.E.C.B.A. Section 29(2)(c) is designed to prevent the employer from interfering with an employee who exercises a right under the Act, including a right to seek



benefits under the collective agreement. The complaint clearly alleges the information request was an act of intimidation, and included a threat of dismissal, in breach of s. 29(2)(c).

Statement that treatment of complainant differed from existing practice in department was not so vague as to leave employer unable to defend itself. Complaint met requirements of Reg. 233, s. 31(1), and there was not basis for dismissing the complaint without a hearing.

UNION: O.P.S.E.U.

EMPLOYER: Ministry of Transportation
Re Snow Plow Operators -
Sudbury District

INDIVIDUAL COMPLAINANT: --

TYPE OF APPLICATION/COMPLAINT: Employee Status

DECISION DATE: Dec. 7/92

PANEL: J.H. Devlin
M. Sullivan
W. Madigan

SUMMARY

EMPLOYEE STATUS - Independent contractors vs. employees - Tests

EMPLOYEE STATUS - Snowplow contractors - Whether independent contractors or employees

EMPLOYEE STATUS - Snowplow relief drivers - Whether employees of Crown or contractors

Issue was whether snow plow contractors and their relief drivers were Crown employees under s. 1(e) of the Public Service Act.

Contractors submitted tenders and the lowest bidders were accepted. They provided the trucks and drivers, while the Ministry provided power sanding units and two-way radios. Ministry also provided a few hours of instruction to each driver, and checked that all drivers were licensed and trucks had requisite insurance and documents. Contractors provided availability schedule of drivers, who were called in as needed by Ministry. Ministry supervised performance of work. Contractors were paid a daily standby rate, but otherwise were paid only for hours driven. Contractors negotiated drivers' salaries and paid drivers themselves.

Held: neither contractors nor drivers were employees.

Dealing first with status of contractors, Tribunal applied factors set out in the Algonquin list, as referred to in O.P.S.E.U. and Ministry of the Attorney General, T/0055/84 & T/0065/84, as well as the statutory purpose test.

Factors indicating an employment relationship included the fact that the Ministry retained control over manner and means of performing work through training, guidelines and monitoring, although contractors recruited and terminated their own relief drivers subject to Ministry approval of their minimum qualifications.

Neutral factors were: the contractors owned some equipment while the Ministry owned other equipment; and the degree of specialization, skill, expertise and creativity were not particularly relevant.

Most factors indicated there was not an employment relationship between the Ministry and the contractors. The contractors could use substitute drivers and handled their scheduling, subject only to minimal checks by Ministry. Entrepreneurial activity by some of the contractors was shown. The contractors bore the chance of profit or risk of loss, which depends on the amount of snowfall and repairs required each season, and the contractor's own business arrangements, and was only partly mitigated by payment of daily standby rate. They were free to sell their services to the general marketplace, which freedom was exercised to varying extents by the contractors. They were free to refuse driving work, as long as substitutes were arranged, and they were free to tender for future bi-annual contracts or not, as they wished. There was a variation of fees charged by contractors, as they depended on tendered bids. Many contractors had other business activities, and when not required to drive they were not assigned other tasks by the Ministry, indicating they were not integrated into the Ministry's business. The Ministry paid the bid rate and made no statutory or benefits deductions, while contractors set and paid the wages for their drivers, and while Ministry could withhold wages not paid to drivers, this provision had never been invoked. Finally, although some Ministry employees perform sanding and salting work, they do so under different conditions in that they are required to take driving tests, they drive Ministry vehicles and these vehicles are repaired in Ministry shops, they are assigned to shifts, they work a set number of hours per week, and they perform maintenance work when not sanding or salting. The statutory purpose test also indicated the contractors were not employees, as there was no long-standing relationship of economic dependence.

Although the Ministry exercised significant control over the manner in which the work was performed, this was offset by the lack of integration of the contractors into the Ministry's operation, the contractors' entrepreneurial activity, and the extent to which they could use substitutes.

The drivers were clearly employees of either the contractors or the Ministry. While Ministry exercised control over their training and

licensing and monitored their work, the contractors recruited, terminated and scheduled the drivers and therefore ultimately controlled whether the drivers worked. Contractors also set their wages and were responsible for their pay and remittances. In at least one case, the drivers were assigned other work by the contractor when not performing salting and sanding work. Drivers were distinguished from Ministry's own employees by their hours of work and the absence of other assignments. Drivers therefore were employees of the contractors, not the Ministry.

UNION: **O.P.S.E.U.**

EMPLOYER: **Ministry of the Attorney
General**

INDIVIDUAL COMPLAINANT: **L. Sauve**

TYPE OF APPLICATION/COMPLAINT: **Employee Status**

DECISION DATE: **Dec. 9/91**

PANEL: **J.H. Devlin
M.J. Sullivan
J.A. Coups**

SUMMARY

EMPLOYEE STATUS - Victim/Witness Coordinator, Sudbury Office - Whether managerial - Sections 1(1)(l)(ii), (iii), (iv) and (viii)

EMPLOYEE STATUS - Managerial or confidential employees - Omnibus exclusion - Sections 1(1)(l)(ii), (iii), (iv) and (viii)

SECTION 1(1)(l)(ii) - Victim/Witness Coordinator, Sudbury Office - Whether formulating organizational policies and objectives

SECTION 1(1)(l)(iii) - Victim/Witness Coordinator, Sudbury Office - Whether spending significant portion of time in supervision - Effective control of subordinate's employment relationship

SECTION 1(1)(l)(iv) - Victim/Witness Coordinator, Sudbury Office - Duty to respond at Stage I of grievance procedure

SECTION 1(1)(l)(viii) - Victim/Witness Coordinator, Sudbury Office - Effective control over subordinate's employment relationship - Conflict of interest - Nature of duties resulting in high public profile

Issue was employee status of Sudbury Victim/Witness Co-ordinator under s. 1(1)(l) of the Act. Co-ordinator implement Victim/Witness Assistance Program in area and supervised one employee, the Support Worker. Co-ordinator reported to the Provincial Co-ordinator at head office.

Held: Victim/Witness Co-ordinator was not an employee for purposes of the Act.

Co-ordinator was not excluded under s. 1(1)(l)(ii) of Act. While she had input into formulation of objectives and policies, she did not play a decisive role and was not a true decision-maker as is required for an exclusion under this section.

Nor did the Co-ordinator spend a significant portion of her time supervising the Support Worker, as she testified she spent about half an hour a day and sometimes more.

Co-ordinator's duties themselves did not justify exclusion under s. 1(1)(l)(viii) of Act. Although she occupied a high profile position in the community, there was nothing in the Program-related duties to required that she be identified with management.

However, Co-ordinator exercised effective control over employment relationship of Support Worker, despite lack of spending significant time in supervisory duties. Co-ordinator hired Support Worker, monitored attendance, scheduled vacations and authorized overtime. She was responsible for Support Worker's appraisals and could take actions such as suspending the Support Worker pending investigation, and could effect the release of the Support Worker. She exercised a significant degree of control over the Support Worker's employment relationship. Given the location far from head office and more senior members of the Program, there was justification for a member of management to supervise a single employee. All this warranted exclusion under either s. 1(1)(l)(iii) or under s. 1(1)(l)(viii) of Act, as her duties in relation to the Support Worker would place her in a conflict of interest were she to be included in the bargaining unit.

Finally, although Support Worker had never filed a grievance, Co-ordinator had authority and responsibility to respond to a grievance at Stage I. This justified exclusion under s. 1(1)(l)(iv).

UNION: **O.P.S.E.U.**

EMPLOYER: **Air-Dale Limited and/or
norOntair, the air division of
Ontario Northland
Transportation Commission**

INDIVIDUAL COMPLAINANT: **--**

TYPE OF APPLICATION/COMPLAINT: **Certification/Employee Status**

DECISION DATE: **Apr. 7/92**

PANEL: **D. Stanley
K. McDonald
J. Coups**

SUMMARY

CERTIFICATION - Provincial vs. federal jurisdiction - Aeronautic operation - Whether Crown employees within Public Service Act - Whether covered by Canada Labour Code - Not covered by C.E.C.B.A. - S. 1(1)(f)

EMPLOYEE STATUS - Provincial vs. federal jurisdiction - Aeronautic operation - Whether Crown employees within Public Service Act - Whether covered by Canada Labour Code - Not covered by C.E.C.B.A. - S. 1(1)(f)

JURISDICTION OF TRIBUNAL - Provincial vs. federal jurisdiction - Aeronautic operation - Whether Crown employees within Public Service Act - Whether covered by Canada Labour Code - Not covered by C.E.C.B.A. - S. 1(1)(f)

SECTION 1(1) (f) - Provincial vs. federal jurisdiction - Aeronautic operation - Whether Crown employees within Public Service Act - Whether covered by Canada Labour Code - Not covered by C.E.C.B.A.

Respondent Air-Dale was a wholly-owned subsidiary of Ontario Northland, a provincial Crown agency. Air-Dale operated a scheduled air service. Applicant union sought to represent a bargaining unit of Air-Dale's employees, including pilots and flight attendants.

Union had previously applied to the Ontario Labour Relations Board, which found that Air-Dale's employees were not an integral part of Ontario Northland and that they were employees of a Crown agency distinct from Ontario Northland. However, the Board also ruled that Air-Dale was engaged in aeronautics and therefore was subject to federal jurisdiction.

In this application, union argued that Air-Dale was a provincial Crown agency and, as such, it was not covered by the Canada Labour Code. Therefore, it was subject to the Crown Employees Collective Bargaining Act.

Held: application dismissed; Air-Dale employees were not subject to C.E.C.B.A.

Although employees of Ontario Northland are excluded from the definition of "Crown employee" in the Public Service Act, this exclusion did not extend to Air-Dale employees, as they were not employees of Ontario Northland and this was not an "immunity" conferred upon Ontario Northland that would extend to its subsidiaries under s. 10 of the Ontario Northland Transportation Commission Act.

Tribunal accepted Board's ruling that Air-Dale was engaged in aeronautics and therefore was within federal legislative jurisdiction. There was some question whether or not Air-Dale's employees were governed by the Canada Labour Code, however, due to s. 16 of the federal Interpretation Act, ss. 108-109 of the Code and the reasons of the Supreme Court of Canada in *IBEW v. Alberta Government Telephone*, [1989] 2 S.C.R. 318.

However, even if employees were not covered by the federal Code, the Tribunal found that they would not then be subject to provincial law, but would be in a legal vacuum, based on the reasoning in the Supreme Court of Canada's decision in *Commission du Salaire Minimum v. Bell Telephone Co.*, [1966] S.C.R. 767.

UNION: O.P.S.E.U.

EMPLOYER: Ministry of Government Services

INDIVIDUAL COMPLAINANT: Catherwood et al.

TYPE OF APPLICATION/COMPLAINT: Unfair Labour Practice?

DECISION DATE: Mar. 3/92

PANEL: J.H. Devlin
P. O'Keefe
R. Redford

SUMMARY

ADJOURNMENT - Complaint properly before Grievance Settlement Board, not Tribunal - Refused

CLASSIFICATION - Delay in implementing Grievance Settlement Board award - Matter properly before Board, not Tribunal

JURISDICTION OF BOARD OF ARBITRATION - Complaint of delay in implementing Grievance Settlement Board award - Matter properly before Board, not Tribunal

JURISDICTION OF TRIBUNAL - Complaint of delay in implementing Grievance Settlement Board award - Matter properly before Board, not Tribunal

Complaints sought reclassification, complaining that reclassification process ordered by Grievance Settlement Board had been unduly protracted. They also sought adjournment because they had been unable to contact union President to discuss the complaint.

Held: adjournment refused; complaint dismissed.

Essence of complaint was delay in implementing Grievance Settlement Board decisions. This was properly a matter for the Board, not the Tribunal, and could also be dealt with under s. 19 of the Act.

Complaint was dismissed without prejudice to complainants' right refile one Board proceedings were completed.

UNION: **O.P.S.E.U.**

EMPLOYER: **Ministry of Natural Resources**

INDIVIDUAL COMPLAINANT: **J. Desi**

TYPE OF APPLICATION/COMPLAINT: **Unfair Labour Practice**

DECISION DATE: **Oct. 22/92**

PANEL: **D. Stanley
P. O'Keeffe
B. Gallivan**

SUMMARY

DISCRIMINATION - Relationship of unfair labour practice complaint to discrimination grievance - Res judicata

JURISDICTION OF TRIBUNAL - Unfair labour practice complaint - Relationship to discrimination grievance - Res judicata

RES JUDICATA - Unfair labour practice complaint -Relationship to discrimination grievance

UNFAIR LABOUR PRACTICE - Relationship to discrimination grievance - Res judicata

Complainant complained of a number of incidents over a three-year period, alleging they were instances of discrimination and harassment due to her union activity as local union President and due to her grievance activity.

Complainant had filed a number of grievances over this period dealing with many of the same incidents, including one a year before this complaint in which she claimed discrimination due to sex and creed (being her belief in

trade unionism) under collective agreement's discrimination article. At the hearing of this grievance she specifically withdrew her allegations of a breach of the Act, and later withdrew the grievance altogether, without mentioning any intention to file a complaint under the Act.

Employer brought preliminary objection, claiming matters in issue had already been dealt with or disposed of, or were the subject of pending grievances, or were matters that could have been raised as grievances at the time they occurred but were not so raised, or were so trivial as to be vexatious.

Held: complaint dismissed.

It was clear that much of the complaint had already been the subject of a grievance, and that during that grievance complainant had specifically withdrawn her allegation of a breach of the Act. In the absence of an expression of intent to withdraw in favour of another forum, employer was entitled to assume the matter had been irrevocably laid to rest. Given this final, unconditional settlement, the matters were *res judicata*, and it was an abuse of process to attempt to resurrect them before the Tribunal.

As for the matters that were not part of the earlier grievance, they were of a similar nature and were within complainant's knowledge at the time she withdrew the grievance, and she expressed no intention to proceed with any new allegations. It would be vexatious and an abuse of process to allow them to continue, under the circumstances.

UNION: **Ontario Association of
Correctional Managers;
O.P.S.E.U., intervenor**

EMPLOYER: **Ministry of Correctional
Services**

INDIVIDUAL COMPLAINANT: **--**

TYPE OF APPLICATION/COMPLAINT: **Certification; Preliminary**

DECISION DATE: **Jan. 23/92**

PANEL: **D. Stanley
M. Sullivan
D. Guptill**

SUMMARY

CERTIFICATION - Proposed unit of all supervisors - Excluded employees - Tribunal's discretion - S. 1(1)(l)

EMPLOYEE STATUS - Supervisors - Proposed unit of all supervisors - Excluded employees - Tribunal's discretion - S. 1(1)(l)

SECTION 1(1)(l) - Proposed unit of all supervisors - Excluded employees - Tribunal's discretion

Applicant sought representation rights for bargaining unit of all persons employed at a correctional institution above the rank of Correctional Officer 2. Intervenor claimed that, if these were employees for purposes of the Act, they fell within intervenor's all employee unit. Employer claimed these were not employees for the purposes of the Act, since they all fell within the managerial exception in s. 1(1)(l).

Applicant conceded that all persons in proposed unit were supervisory

employees, but argued that managerial exclusions should be read in the context of the spirit of the legislation. These employees had no real responsibility for collective bargaining, which was exercised solely by executive branch of Ministry.

In the alternative, applicant argued that employees' exclusion from the Act was contrary to the Charter of Rights and Freedoms, but only the first ground was argued at this time.

Held: application not successful on first ground.

Tribunal noted that Correctional Officers IV had been found to be supervisory employees excluded from the Act in a previous case, and all employees above that rank would also be supervisory. It would be inconsistent to exclude them in one instance and find them to be employees within the Act in another instance.

Further, Tribunal has no discretion to consider whether a supervisor's exclusion is warranted on policy grounds, given the very specific legislation and the consistent effect given to it by the Tribunal. Only a constitutional challenge based on the Charter could possibly overcome this; applicant was to advise whether it intended to proceed with Charter argument.

UNION: **O.P.S.E.U.**

EMPLOYER: **Management Board of Cabinet**

INDIVIDUAL COMPLAINANT: **L. Flowers**

TYPE OF APPLICATION/COMPLAINT: **Religious Objection**

DECISION DATE: **Jan. 28/92**

PANEL: **G. McKechnie
B. Gallivan
E. Whitthames**

SUMMARY

RELIGIOUS OBJECTION - Seventh Day Adventist - Exemption allowed - S. 16(2)

SECTION 16(2) - Seventh Day Adventist - Exemption allowed

Applicant, a Seventh Day Adventist, sought exemption from union dues on religious grounds. She stated that her religion objects to confrontational or adversarial tactics, and therefore objects to unions, although she agreed with many of this union's aims.

Union opposed objection on ground that applicant delayed in requesting an exemption and that she knew when she accepted job that it was a bargaining unit position.

Held: exemption granted.

Evidence showed applicant raised matter of exemption within a few months of starting work. In any event, timing of application does not negate her beliefs or their relationship to her objection to paying union dues.

Applicant was sincere in her beliefs and her beliefs were religious, not social or political. The necessary relationship was shown between her religious beliefs and the objection to paying dues. Amount of dues was ordered to be directed to a mutually agreeable organization or, failing agreement, matter was to be referred back to Tribunal.

UNION: O.P.S.E.U.

EMPLOYER: Ministry of Health and Lindsay
and District Ambulance
Service Ltd.

INDIVIDUAL COMPLAINANT: --

TYPE OF APPLICATION/COMPLAINT: Certification/ Employee Status;
Preliminary

DECISION DATE: Apr. 8/91

PANEL: D. Stanley
M. Sullivan
J. Coups

SUMMARY

CERTIFICATION - Pre-hearing vote procedure - Whether properly ordered before finding of Crown agency

EMPLOYEE STATUS - Ambulance service - Whether Crown agency

EMPLOYEE STATUS - Crown agency - Ambulance service

PROCEDURE - Pre-hearing vote - Whether properly ordered before finding of Crown agency

Employer and intervenor Employees' Association opposed application on ground employer was not a Crown agency, or in alternative that new representation vote should be ordered, since there had been no finding of Crown agency status at time vote was taken.

Held: employer was Crown agency; request for new vote refused.

Panel of Tribunal that ordered pre-hearing vote had jurisdiction in this instance, and there were no grounds for setting aside that vote.

There were no facts to distinguish this employer from the decision in McKechnie Ambulance, T/0058/84-2. Therefore, employer was a Crown agency and its employees were governed by C.E.C.B.A.

UNION: **O.P.S.E.U.**

EMPLOYER: **Ministry of Government
Services**

INDIVIDUAL COMPLAINANT: **--**

TYPE OF APPLICATION/COMPLAINT: **Employee Status; Preliminary**

DECISION DATE: **Jan. 19/93**

PANEL: **D. Stanley
M. Sullivan
W. Madigan**

SUMMARY

EMPLOYEE STATUS - Settlement of employee status application - Right to enforce settlement - Procedure - S. 32(5)

PROCEDURE - Settlement of employee status application - Right to enforce settlement - S. 32(5)

SETTLEMENT - Employee status application - Right to enforce settlement - Procedure - S. 32(5)

SECTION 32(5) - Settlement of employee status application - Right to enforce settlement - Procedure

Union applied under s. 32(5) to enforce settlement of an employee status application under s. 40(1). Parties had agreed to settle s. 40 matter, but union alleged employer had refused to comply with the settlement.

Employer argued that s. 32(5) procedure for enforcing settlements did not apply to settlements of s. 40 matters, and that union's only option was to re-open s. 40 application and deal with it on its merits.

Held: employer's objection dismissed.

Tribunal had jurisdiction to enforce terms of settlements, either under s. 32(5) or on an application to reopen the original application that led to the settlement. This was part of Tribunal's general plenary jurisdiction to support the industrial relations process whereby parties settle matters.

UNION: O.P.S.E.U.

EMPLOYER: Ministry of Health and
Bolton and District Voluntary
Ambulance Association

INDIVIDUAL COMPLAINANT: --

TYPE OF APPLICATION/COMPLAINT: Certification/ Employee Status;
Preliminary

DECISION DATE: Aug. 17/92

PANEL: G. McKechnie
M. Sullivan
D. Guptill

SUMMARY

EMPLOYEE STATUS - Ambulance Service - Whether independent contractor or Crown agency - Effect of volunteer employees - Degree of control, ownership of tools and risk of profit and loss

EMPLOYEE STATUS - Crown agency - Whether Ambulance Service independent contractor or Crown agency - Effect of volunteer employees - Degree of control, ownership of tools and risk of profit and loss

Respondent Ambulance Service claimed it was not a Crown agency. Although it had three full-time employees, it used volunteer ambulance attendants to staff nights and weekends. Its main base was owned by the Town, not the Ministry, and it provided training beyond that required by Ministry.

Held: respondent was Crown agency.

The three full-time employees were treated the same as employees of other ambulance services, and it was a bargaining unit of these employees that union intended to organize. There was no difference between this employer and the McKechnie Ambulance case (T/0058/84-2) in terms of degree of

control, ownership of tools, and risk of profit and loss. While respondent may have had some discretion in its operation, it was still subject to all the basic statutory requirements of an ambulance service and had to report its operations to the Ministry. Further, Ministry had control over a vast number of its operations and owned much of its equipment.

UNION: O.P.S.E.U.

EMPLOYER: Ministry of Health and
Nobleton Ambulance
Association

INDIVIDUAL COMPLAINANT: --

TYPE OF APPLICATION/COMPLAINT: Employee Status

DECISION DATE: Jan. 13/93

PANEL: G. McKechnie
M. Sullivan
J. Coups

SUMMARY

EMPLOYEE STATUS - Ambulance Service - Whether independent contractor or Crown agency - Effect of volunteer employees - Alleged joint venture between community and government

EMPLOYEE STATUS - Crown agency - Whether Ambulance Service independent contractor or Crown agency - Effect of volunteer employees - Alleged joint venture between community and government

Respondent Ambulance Service claimed it was not a Crown agency. Although it had some employees, more than half of its attendants' hours were supplied by volunteers. It argued that, due to community provision of its building and contribution of volunteers, Service was a joint venture between community and government, and therefore it was not a Crown agency.

Finally, employer argued that matter should be adjourned pending resolution of Bill 169, which had received first reading.

Held: respondent was Crown agency.

There were no significant differences in this case between Respondent and McKechnie Ambulance (T/0058/84-2) and Bolton and District Voluntary Ambulance Association (T/0068/91-1). Government's degree of control led to conclusion that Respondent was Crown agency and was subject to C.E.C.B.A.

It was not appropriate to delay a decision based on a bill that had not proceeded to statute form.

UNION: **O.P.S.E.U.**

EMPLOYER: **--**

INDIVIDUAL COMPLAINANT: **R. LeClair and A. Czekierda**

TYPE OF APPLICATION/COMPLAINT: **Duty of Fair Representation**

DECISION DATE: **June 10/92**

PANEL: **G. McKechnie
M. Sullivan
B. Gallivan**

SUMMARY

ADJOURNMENT - Failure to request ahead of time - One party not appearing, other not prepared to proceed - Complaint dismissed

DUTY OF FAIR REPRESENTATION - Procedure - One party not appearing, other not prepared to proceed - Failure to request adjournment ahead of time - Complaint dismissed

PROCEDURE - Parties not appearing for hearing - One party not appearing, other not prepared to proceed - Failure to request adjournment ahead of time - Complaint dismissed

Complainant AC attended at hearing seeking adjournment, on ground case was to be presented by complainant RL and he was out of the country. Notice had been mailed to RL and he had spoken to union counsel seeking adjournment of another matter before he left, but had not mentioned this hearing.

Held: complaint of RL dismissed; complaint of AC withdrawn without prejudice.

There was no evidence that RL was not aware of hearing, simply that he had left on vacation without regard to his responsibility to attend or make

appropriate arrangements for an adjournment. Since he did not attend to present his complaint, it was dismissed.

AC was given an hour to articulate her complaint so that hearing could proceed, but she decided to withdraw it without prejudice.

UNION: O.P.S.E.U.

EMPLOYER: --

INDIVIDUAL COMPLAINANT: L. Hartley

TYPE OF APPLICATION/COMPLAINT: Duty of Fair Representation

DECISION DATE: May 5/93

PANEL: G. McKechnie
M. Sullivan
D. Guptill

SUMMARY

DUTY OF FAIR REPRESENTATION - Refusal to represent complainant in grievance as third party incumbent - No duty to provide representation to party adverse in interest

DUTY OF FAIR REPRESENTATION - Right to counsel - Duty of union to provide representation for complainant as third party incumbent in grievance

PROCEDURE - Right to counsel or representation - Refusal to represent complainant in grievance as third party incumbent - No duty to provide representation to party adverse in interest

Complainant was the successful applicant in a job competition that was grieved by another employee. Union supported the grievor, even though success in the grievance might mean complainant would become unemployed. Complainant argued union had a duty to provide her with representation, either by representing her itself or by paying for legal counsel for her. She also challenged union's policy of always representing grievors rather than third party incumbents in job competition grievances.

Union argued that it had offered to represent complainant in a grievance if she lost her job due to the job competition grievance, and that it had no duty

to provide counsel to complainant, as she was a party adverse in interest to its own position on the job competition grievance.

Held: complaint dismissed.

Union's review of competing claims between its members was a matter of internal union business and was not within the Tribunal's jurisdiction. Once union decided to pursue the grievance, complainant became adverse in interest and union could not also represent her. Nothing in the Act required union to provide representation or financial compensation to a third party incumbent. Union did not act in a manner that was arbitrary, discriminatory or in bad faith.

UNION: O.P.S.E.U.

EMPLOYER: Ministry of Labour and
Workers Compensation
Appeals Tribunal

INDIVIDUAL COMPLAINANT: --

TYPE OF APPLICATION/COMPLAINT: Certification; Preliminary

DECISION DATE: Feb. 17/93

PANEL: G. McKechnie
K. McDonald
R. Redford

SUMMARY

**CERTIFICATION - Vote - Entitlement to vote - Employee hired after
terminal date not entitled to vote**

Union sought ruling to exclude ballot of an employee from being counted in a representation vote. Employee was hired after the application terminal date but before the date of the vote.

Held: ballot excluded.

Employees must be employed on both the terminal date and the vote date to have their ballots counted.

UNION: **O.P.S.E.U.**

EMPLOYER: **Ministry of Correctional Services**

INDIVIDUAL COMPLAINANT: **J. Villella**

TYPE OF APPLICATION/COMPLAINT: **Unfair Labour Practice; Interim**

DECISION DATE: **July 14/93**

PANEL: **R. Abramsky
M. Sullivan
W. Madigan**

SUMMARY

INTERFERENCE WITH UNION - Suspension of local union president pending sexual harassment investigation - Fear of interference not justifying lengthy suspension - Interim reinstatement order

INTERFERENCE WITH WITNESSES - Sexual harassment investigation - Fear of interference not justifying lengthy suspension of accused local union president - Interim reinstatement order

PROCEDURE - Interim order - Tribunal's jurisdiction to issue interim reinstatement order

SEXUAL HARASSMENT - Investigation - Suspension of local union president pending sexual harassment investigation - Fear of interference not justifying lengthy suspension - Interim reinstatement order

UNFAIR LABOUR PRACTICE - Procedure - Interim order - Tribunal's jurisdiction to issue interim reinstatement order

UNFAIR LABOUR PRACTICE - Suspension of local union president pending sexual harassment investigation - Fear of interference not justifying lengthy suspension - Interim reinstatement order

SECTION 38(13) - Procedure - Interim order - Tribunal's jurisdiction to issue interim reinstatement order

SECTION 39 - Procedure - Interim order - Tribunal's jurisdiction to issue interim reinstatement order

SECTION 43 - Procedure - Interim order - Tribunal's jurisdiction to issue interim reinstatement order

SECTION 50(3) - Procedure - Interim order - Tribunal's jurisdiction to issue interim reinstatement order

Union sought interim order reinstating J. Villella and vacating his suspension with pay. Villella was the local union president; he was suspended with pay due to a complaint under the employer's Workplace Discrimination and Harassment Prevention Policy. Union argued the suspension interfered with Villella's ability to administer the local union and represent the employees, and that this was a breach of s. 29 of the Act.

Held: Villella reinstated to his position on an alternate schedule from that of the complainant in the sexual harassment charge against him.

Tribunal concluded it had jurisdiction to issue interim orders under ss. 38(13), 39, 43 and 50(3). Proper standard for issuing interim order depends on whether complainant's main application presents an arguable case on the merits, and a comparison of the harm which may occur if the order is granted and the harm that may occur if it is not.

Here, there was an arguable case on the merits, as the employer conceded that Villella's suspension and the complete prohibition on his visiting the workplace had interfered with the local union's administration and representation of the members. This harm, which was actual and was conceded by the employer, outweighed the speculative chance of harm to the employer and the sexual harassment investigation from reinstating him. The investigation was likely to continue for some time, and there were no claims of a general pattern of harassment. Any actual interference with the investigation could be dealt with by discipline and could justify the Tribunal in vacating its reinstatement order.

UNION: O.P.S.E.U.

EMPLOYER: City Ambulance Service of
Quinte Ltd.

INDIVIDUAL COMPLAINANT: --

TYPE OF APPLICATION/COMPLAINT: Certification

DECISION DATE: Sept. 29/93

PANEL: G. McKechnie
R. Gallivan
K. McDonald

SUMMARY

BARGAINING UNIT - Single unit for part-time and full-time employees -
Onus on employer to show single unit inappropriate - Onus not met

CERTIFICATION - Bargaining unit - Single unit for part-time and full-
time employees - Onus on employer to show single unit inappropriate -
Onus not met

PART-TIME EMPLOYEES - Bargaining unit - Single unit for part-time and
full-time employees - Onus on employer to show single unit inappropriate -
Onus not met

Union applied for certification of a single bargaining unit. At time of vote
there were approximately 19 full-time and 22 part-time employees.

Employer argued that there should be separate bargaining units for part-
time and full-time employees, because of the service's unique nature in
operating from four geographic locations, fact that pay and benefits differed
between part- and full-time employees, and fact that many part-time
employees had full-time jobs elsewhere, so their interests differed.

Held: single bargaining unit established.

Given jurisprudence supporting inclusive bargaining units, employer had not met onus of showing such unique qualities that a single bargaining unit would be inappropriate.

complaint. The second and third complaints were not signed or dated, although they were accompanied by a signed and dated covering letter.

Held: all three complaints consolidated, on condition that second complaint be properly amended.

Tribunal had power under Regulation 39 to consolidate matters. Test for consolidation was whether matters involved a common question of law or fact bearing sufficient importance in proportion to the rest of the action.

Although second complaint did not refer to suspension of labour relations situation, it was premised on that background, according to the arguments of counsel. Therefore the three complaints dealt with the same fact situation, and a common theory of violation of the Act. While second and third complaints seemed to focus on the merits of the incidents alleged, the background situation was central, according to counsel. Therefore, common issues were of sufficient importance to justify consolidation. Failure to consolidate would lead to a real risk of inconsistent findings and conclusions.

Union was directed to amend second complaint to reflect the arguments made at the hearing, to bring it into accord with the requirements of Reg. 31.

Failure to sign and date complaints was a mere technical matter, given the covering letter, and was covered by s. 55 of the Act.

UNION: O.P.S.E.U.

EMPLOYER: Ministry of Correctional Services

INDIVIDUAL COMPLAINANT: E. Ikumsah

TYPE OF APPLICATION/COMPLAINT: Unfair Labour Practice; Preliminary

DECISION DATE: Sept. 29/93

PANEL: G. McKechnie
M. Sullivan
R. Gallivan

SUMMARY

JURISDICTION OF BOARD OF ARBITRATION - Unfair labour practice - Refusal to employ - Non-renewal of contract - Whether Tribunal has jurisdiction - S. 29(2)(a)

JURISDICTION OF TRIBUNAL - Unfair labour practice - Refusal to employ - Non-renewal of contract - Whether Tribunal has jurisdiction - S. 29(2)(a)

UNCLASSIFIED EMPLOYEES - Non-renewal of contract - Whether Tribunal has jurisdiction - S. 29(2)(a)

UNFAIR LABOUR PRACTICE - Refusal to employ - Non-renewal of contract - Whether Tribunal has jurisdiction - S. 29(2)(a)

SECTION 29(2)(a) - Refusal to employ - Non-renewal of contract - Whether Tribunal has jurisdiction

Individual complainant was dismissed from his position as an unclassified correctional officer and grieved. The Grievance Settlement Board ordered the employer to reinstate him. The employer did reinstate him, but when his contract expired it was not renewed. Union then filed an unfair labour practice complaint.

Employer brought a preliminary objection that the Tribunal was without jurisdiction due to s. 9 of the Public Service Act, which states that an appointment ceases at the expiration of the specified period, and therefore there had been no dismissal.

Held: preliminary objection dismissed.

Section 29(2)(a) does not prohibit dismissal; rather, it forbids a refusal to employ due to a person exercising a right under the Act. Section 32(4)(a) gives the Tribunal broad remedial powers. This differs from the G.S.B.'s jurisdiction to hear discipline and dismissal complaints. While non-renewal of a contract may not be a dismissal under ss. 18 and 19 of the Act, it may come within the wording of ss. 29 and 32.

Furthermore, the G.S.B. is limited to considering whether dismissal has occurred for just cause. The Tribunal has a broader jurisdiction to consider whether a refusal to employ or continue to employ has occurred because the person exercised a right under the Act.

Tribunal had jurisdiction here to hear the merits of the complaint, based on the claim that there was a refusal to employ due to the complainant exercising his rights under the Act by lodging a grievance, which was successful.

UNION: **D. Serbin, Respondent, and
Textile Processors, Service
Trades, Health Care,
Professional and Technical
Employees International
Union, Local 351A**

EMPLOYER: **L. Koch, Respondent, and
Metropolitan Toronto
Convention Centre**

INDIVIDUAL COMPLAINANT: **A. Ramji**

TYPE OF APPLICATION/COMPLAINT: **Unfair Labour Practice/
Duty of Fair Representation**

DECISION DATE: **Sept. 30/93**

PANEL: **R. Abramsky
M. Sullivan
B. Gallivan**

SUMMARY

DUTY OF FAIR REPRESENTATION - Failure to pursue grievance - Claim of unfairness and favouritism - No particulars - No *prima facie* case

PROCEDURE - Particulars - Complainant of unjust dismissal, and unfairness by union in failing to pursue grievance - No *prima facie* case

UNFAIR LABOUR PRACTICE - Unjust dismissal claim - No particulars - Tribunal's jurisdiction - Complaint not alleging a *prima facie* breach of Act

Complainant claimed he was dismissed from his job as a casual banquet waiter without just cause. He filed a grievance, but after the prehearing the union advised him that there was no chance of winning and it would not proceed to arbitration. The complainant appeared in front of the union's Grievance Committee and had a chance to present his case before this decision was taken; the union also got a legal opinion on the grievance.

The complainant alleged breaches of a number of sections of the Labour Relations Act. These were taken as alleging similar sections of C.E.C.B.A. The complainant alleged unjust dismissal against the employer, and alleged favouritism, unfairness and injustice against the union. However, no facts were alleged to support these claims, despite many requests for particulars and a number of chances to explain his case at the hearing.

Both respondents moved to dismiss the complaint for failure to allege a *prima facie* violation of the Act.

Held: complaint dismissed for failure to state a *prima facie* case.

Nothing in the complaint against the employer tied his alleged dismissal to the exercise of his rights under the Act or for his union activities. A general claim of unjust dismissal does not allege a breach of the Act within the Tribunal's jurisdiction.

The allegations against the union were not substantiated by any material facts that could constitute a breach of the Act. Unions have no duty under the Act to pursue all grievances to arbitration, as long as they evaluate the matter in a good faith, non-arbitrary and non-discriminatory way. Nothing in the complaint or in what was stated at the hearing supported the complainant's bald allegations of unfairness.

